

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 SHAUNA GUTIERREZ
11 May 3, 2018
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1 THE COURT: All right. Ms. Armijo, does
2 the Government have its next witness or evidence?

3 MS. ARMIJO: Yes, Your Honor. Shauna
4 Gutierrez. It may take a moment to switch them out.

5 Your Honor, while we're waiting, may we
6 approach?

7 THE COURT: You may.

8 (The following proceedings were held at
9 the bench.)

10 MS. ARMIJO: I don't know that we need
11 everybody. But I had spoken to Mr. Benjamin about
12 this. We'll probably be in the middle of Shauna
13 Gutierrez's testimony, and we have a medical
14 examiner coming this afternoon.

15 THE COURT: All right.

16 MS. ARMIJO: So he did not object to him
17 getting on the stand, just because he's an expert;
18 we wanted to get him in and out.

19 MR. BENJAMIN: Thinking about a doc being
20 paid more.

21 THE COURT: It's called professional
22 courtesy. We'll take him out of line.

23 MR. BENJAMIN: I have no objection at all.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: All right, Ms. Gutierrez. If
2 you'll come on in and stand next to the witness box,
3 before you're seated, my courtroom deputy, Ms. Bevel
4 will swear you in. If you'll raise your right hand
5 to the best of your ability there.

6 SHAUNA GUTIERREZ,
7 after having been first duly sworn under oath,
8 was questioned, and testified as follows:

9 THE CLERK: Please be seated. Please
10 state your name and spell your last name for the
11 record.

12 THE WITNESS: Shauna Gutierrez.
13 G-U-T-I-E-R-R-E-Z.

14 THE COURT: Ms. Gutierrez. Ms. Armijo.
15 MS. ARMIJO: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. ARMIJO:

18 A. Ms. Gutierrez, how old are you?

19 A. I'm 38.

20 Q. I think you're going to -- that was kind
21 of a test question, because I think you're going to
22 have to move it up and move forward.

23 A. I'm 38.

24 Q. All right. And where did you grow up?

25 A. Los Lunas, New Mexico.

1 Q. Do you have any kids?

2 A. I have six kids.

3 Q. And at some -- now, you know why you're
4 here today?

5 A. I do.

6 Q. And did you actually -- were you actually
7 charged in this case and have you pled guilty?

8 A. Yes, I have.

9 Q. Now, prior to your involvement in this
10 case -- and let me ask you this question. Were you
11 involved with drugs in your life?

12 A. Yes, I was.

13 Q. And when did you start using drugs?

14 A. I started using drugs between maybe five
15 years ago. That's when I started.

16 Q. Okay.

17 MR. SINDEL: Could we pull the
18 microphone --

19 THE COURT: She'll just have to talk
20 louder. I think we've got her positioned as well as
21 we can.

22 If you'll just talk as loud as you can,
23 Ms. Gutierrez.

24 THE WITNESS: All right.

25

1 BY MS. ARMIJO:

2 Q. And did you -- you indicated that was
3 about five, six years ago?

4 A. About five, six years ago I started doing
5 meth.

6 Q. Did you always stay in Los Lunas your
7 whole life or --

8 A. No, I've lived in Las Vegas, New Mexico.
9 I was going to college out there. And I've also
10 lived in Colorado.

11 Q. And do you have a prior marriage?

12 A. Yes, I've been married and divorced twice.

13 Q. And prior to your drug usage, did you have
14 any criminal history or anything else?

15 A. Not at all.

16 Q. And what happened to get you involved in
17 drugs?

18 A. I was diagnosed with ADD, and I got hooked
19 on Adderall. And Adderall was my gateway drug. I
20 started using meth. It was easier to get than
21 Adderall. And it just went out of control for me
22 from there.

23 Q. And you stated that you -- did you -- at
24 that time were you back in Los Lunas?

25 A. Yes, I was.

1 Q. Did you start a relationship with somebody
2 named Joe Lawrence Gallegos?

3 A. Yes, I had.

4 Q. And when was that, approximately?

5 A. That was approximately -- it was around
6 2015. It was after my accident.

7 Q. Okay. And do you recall what part of the
8 year in 2015, if it was summer or spring or winter?

9 A. I started going out with him September 21,
10 actually, to be precise.

11 Q. September 21.

12 A. It was the day before my son's birthday.

13 Q. All right. And had you met him before
14 then?

15 A. Yes. I started talking to him on
16 Facebook. I was responding to some of his poems
17 that he had done on Facebook. And that was around
18 Mother's Day of 2015, when I started talking to him.

19 Q. And did you kind of develop a relationship
20 through then?

21 A. We started talking a lot more, and then we
22 started texting each other, and then we started
23 hanging out September 21, and it went from there.

24 Q. When you say "hang out together," did you
25 basically, for all intents and purposes, live with

1 him?

2 A. I lived with him a short time after that.
3 I was living in Albuquerque when we started hanging
4 out, but it was probably around October when I
5 actually moved in.

6 Q. Do you remember the address or area of
7 where you were residing?

8 A. In Los Lunas with him?

9 Q. Yes.

10 A. 04 Erin Court.

11 Q. And who else lived there?

12 A. It was just him.

13 Q. Now, I'm going to -- do you see Joe
14 Gallegos in the courtroom today?

15 A. Yes, I do.

16 Q. Do you see the gentleman that stood up?

17 A. (Witness nods.)

18 Q. Is that a yes?

19 A. Yes. Sorry.

20 Q. Did you have feelings for Joe Lawrence --
21 did you call him Joe or Joe Lawrence?

22 A. I called him Joe.

23 Q. Did you have feelings for Joe?

24 A. Yes, I did.

25 Q. And is it difficult being here today?

1 A. It is.

2 Q. Do you know any of his family members,
3 specifically brothers?

4 A. No, I met Smiley, his brother Andrew,
5 through this whole court proceeding. But that's it.
6 I didn't really know his brothers.

7 Q. Okay. And you say Smiley?

8 A. Andrew, Andrew Gallegos.

9 Q. And you met him through the course of --

10 A. Through all the proceedings, the court
11 proceedings.

12 Q. All right. Now, you talked about 4 Erin
13 Court; is that correct?

14 A. Yes.

15 Q. And when you say you started a
16 relationship, is it fair to say it was a romantic
17 relationship?

18 A. Yes, it was.

19 Q. And did you know Joe's family as far as
20 his kids?

21 A. Yes, I met his daughter and his son.

22 Q. Okay. And what is his daughter's name?

23 A. Angela.

24 Q. And what about his son's name?

25 A. His son's name is Joe.

1 Q. Did you know a person named Brandy
2 Rodriguez?

3 A. Brandy, yes, I did.

4 Q. And I'm going to show on the screen
5 Exhibit Number 895. Who is that individual?

6 A. That's Brandy Rodriguez.

7 Q. And do you know -- how do you know Brandy
8 Rodriguez?

9 A. I met her through Joe.

10 Q. Was there a name that she called Joe?

11 A. She always called him "jefe."

12 Q. Jefe?

13 A. Yes.

14 Q. Do you know what "jefe" means?

15 A. Father.

16 Q. And did Joe ever call her something other
17 than Brandy?

18 A. Everybody calls her Huera.

19 Q. Huera?

20 A. Yes.

21 Q. What was the relationship between Joe and
22 Brandy?

23 A. He was like a dad to her. He helped raise
24 her.

25 Q. Was she close with the family?

1 A. Yes, she was.

2 Q. Do you know if she knew Andrew Gallegos?

3 A. Yes, she did.

4 Q. And how do you know that?

5 A. I know that they have a kid together. I
6 mean, she's part of the family. She's -- she's been
7 there for a long time, I mean, and they would
8 communicate with each other.

9 Q. Now, do you know of a name that Andrew
10 Gallegos would call Brandy, a nickname?

11 A. Lizard.

12 Q. Now, I'm going to go to December 3, 2015.
13 Do you recall where you were early that morning?

14 A. Yes. That was the night that you guys
15 came in and got Joe.

16 Q. When you say "you guys" --

17 A. The feds.

18 Q. -- you're not referring to me
19 specifically?

20 A. Not you specifically.

21 Q. Okay. The federal government?

22 A. Yes.

23 Q. Is that when Joe was arrested?

24 A. That was when Joe was arrested, yes.

25 Q. Were you with him when Joe was arrested?

1 A. Yes, I was.

2 Q. Now, before December 3 of 2015 -- I guess
3 you said you started the relationship late
4 September. Were you primarily with Joe during that
5 time from --

6 A. Yes.

7 Q. -- October, November, through December?

8 A. Yes, I was.

9 Q. December 3 to be exact?

10 A. Yes.

11 Q. And did Joe ever make any comments to you
12 about a person named Jason?

13 A. Yes, he did.

14 Q. Okay. Now who is Jason?

15 A. Jason. He was a mutual friend of both of
16 ours. He lived down the road. Jason Van Veghel.
17 He -- he's been around for a while in Los Chavez
18 where we all live.

19 Q. And what comment did Joe make to you?

20 A. We were on our way home one night, and out
21 of nowhere Joe told me, "If I ever go to jail, it
22 will be because of Jason."

23 Q. And what did you say in response to that?

24 A. I didn't really say anything. He didn't
25 give anything more. I didn't ask any questions. It

1 was one of those things where you just -- you don't
2 ask questions.

3 Q. Had you seen Jason or were you near his
4 house? What prompted --

5 A. His house is close to where Joe's is. And
6 you can see it turning down the road to where we
7 were living. So just out of nowhere, that's when he
8 made that comment.

9 Q. And then Joe was arrested on December 3,
10 2015; is that correct?

11 A. That's correct.

12 Q. And did your relationship with Joe
13 continue after his arrest?

14 A. It did for a couple of months over the
15 phone, yes.

16 Q. And that was going to be my next question.
17 Did you have phone conversations with him?

18 A. Yes, we did.

19 Q. Did you have -- would he send letters?

20 A. Yes, he would.

21 Q. Would he send letters to you to give to
22 other people?

23 A. Yes, he would, to give to his daughter.

24 Q. And at some point in time, were you aware
25 that he had been pending charges in reference to a

1 different incident?

2 A. I knew he had a state charge, but I didn't
3 know what it was about.

4 Q. And after his arrest, would he ask you to
5 do certain things on phone calls from --

6 MR. BENJAMIN: Objection, Your Honor.
7 Vague.

8 THE COURT: Overruled.

9 A. Can you please clarify?

10 BY MS. ARMIJO:

11 Q. Sure. Would he tell you -- and I'm just
12 saying in general, were there things that he would
13 ask you to do, just in general?

14 A. Yes, in general, mostly keep up the house,
15 make sure I did the skirting, so I could stay warm,
16 and things like that.

17 Q. Okay. Now, did you know of a person by
18 the name of Paul Rivera?

19 A. Yes, I do.

20 Q. And do you know a person named Santos
21 Gonzalez?

22 A. Yes, I do.

23 Q. And I'm going to go now to -- well, first
24 off, I'm going to show you -- are you familiar with
25 Joe Gallegos' handwriting?

1 A. Yes, I am.

2 Q. Are you aware of whether or not, in
3 addition to you, through your conversations with him
4 after his arrest, if he was writing to other people?

5 A. Yeah. He did write to Brandy, also.

6 Q. All right.

7 MS. ARMIJO: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 BY MS. ARMIJO:

11 Q. Ms. Gutierrez, I'm showing you
12 Government's Exhibit 966, and I'm going to ask you
13 if you can recognize that handwriting.

14 A. Yes, I do recognize it. It's Joe's
15 writing.

16 Q. It's Joe's writing?

17 A. Um-hum.

18 MS. ARMIJO: The United States would move
19 for the admission of 966.

20 THE COURT: Any objection?

21 MR. BENJAMIN: Your Honor, I think the one
22 thing that's missing is foundation, how they
23 received it.

24 THE COURT: I think there has been a
25 sufficient foundation for it. So I'll admit

1 Government's Exhibit 966.

2 (Government Exhibit 966 admitted.)

3 MR. BENJAMIN: Ms. Armijo, what was the
4 Bates number?

5 MS. ARMIJO: The Bates No. is 21839
6 through 21840. But what is marked, Your Honor, is
7 the original.

8 BY MS. ARMIJO:

9 Q. All right. Ms. Gutierrez, can you see
10 what's on the screen?

11 A. Yes.

12 Q. All right. And is this addressed to who?

13 A. To Huera.

14 Q. And have you had an opportunity to read
15 this letter?

16 A. I kind of glanced over it. It's really
17 hard to read his writing sometimes.

18 Q. Okay. And I'm going to go here towards
19 the middle. And does this say, "You know, Shauna is
20 a good one"? Is that in reference to you?

21 A. Yes, it is.

22 Q. Okay. And "She is very smart but dingy."
23 Is that in reference to you?

24 A. Yes, it is.

25 THE COURT: Ms. Armijo, before we get too

1 far into the letter, could we take our 15-minute
2 break and come back and work through the lunch hour?

3 MS. ARMIJO: Yes, Your Honor.

4 THE COURT: All right. So we'll take a
5 15-minute break and we'll take a late lunch.

6 All rise.

7 (The jury left the courtroom.)

8 THE COURT: All right. We'll be in recess
9 for about 15 minutes.

10 (The Court stood in recess.)

11 (The jury entered the courtroom.)

12 THE COURT: All right. Ms. Gutierrez,
13 I'll remind you that you're under oath.

14 Ms. Armijo, if you wish to continue your
15 direct examination of Ms. Gutierrez, you may do so
16 at this time.

17 MS. ARMIJO: Thank you, Your Honor.

18 THE COURT: Ms. Armijo.

19 BY MS. ARMIJO:

20 Q. Ms. Gutierrez, we were just going over
21 Government's Exhibit 966. I believe before the
22 break I believe where we were talking, "She is very
23 smart but dingy." Is that in reference to you?

24 A. Yes, it is.

25 Q. Then does he say, "I never expected that

1 from her. Just so you know, you can trust her. And
2 I'd like for you to back her up."

3 A. Right.

4 Q. And then it says, "She hates to ask for
5 anything, so step up and help her." Do you see
6 that?

7 A. Yes, I do.

8 Q. All right. Just so we can go to the back
9 of this, it says -- do you know how he signs his
10 letters?

11 A. I don't know what that says.

12 Q. Okay. Does that look like "siempre"? Do
13 you know Spanish?

14 A. It looks like it, because they say
15 "siempre."

16 MR. BENJAMIN: Objection, Your Honor,
17 leading.

18 THE COURT: Overruled.

19 BY MS. ARMIJO:

20 Q. And then what's the next word? Do you
21 see?

22 A. It looks like, "Siempre con usted."

23 Q. And do you know what that means in
24 English?

25 A. "Simply with" -- I'm not sure. "Simply

1 with you."

2 Q. Now, after -- and you were having phone
3 conversations with Joe Gallegos from December
4 through January; is that correct?

5 A. That's correct.

6 Q. I want to go through the end of February
7 of 2016.

8 A. Okay.

9 Q. And just so we're clear, I'm going to
10 use -- the defense has already marked it as an
11 exhibit. Is this your plea agreement here? This is
12 Exhibit Number BQ-1.

13 A. Yes, it is.

14 Q. And is this your plea agreement?

15 A. Yes, it is.

16 Q. Did you plead guilty on March 29th of
17 2018?

18 A. Yes, I did.

19 Q. Is that your signature in the back?

20 A. Yes, it is.

21 Q. Is that your attorney's signature in the
22 back?

23 A. Yes, it is.

24 Q. And do you know if Mr. Castellano signed
25 this plea agreement?

1 A. Yes, he did.

2 Q. And did you read this plea agreement?

3 A. I did.

4 Q. And specifically did you plead to the
5 counts for which you were charged in the indictment?

6 A. Yes, I did.

7 Q. And looking at it, does it indicate that
8 you pled guilty to -- and I'm looking at page 2 --
9 violent crimes in aid of racketeering, specifically
10 a conspiracy to murder?

11 A. Yes, I did.

12 Q. And did you also plead guilty to another
13 violent crimes in aid of racketeering, an attempted
14 murder, assault resulting in serious bodily injury,
15 and assault with a dangerous weapon?

16 A. Yes, I did.

17 Q. And did you plead guilty to Count 16,
18 which was a witness tampering count?

19 A. Yes, I did.

20 Q. And do you know who the victim was in
21 reference to this incident?

22 A. Yes, I do.

23 Q. And who was that?

24 A. Jose Gomez.

25 Q. And Jose Gomez. Were you present during

1 this attack?

2 A. No, I wasn't.

3 Q. Now in reference to this incident, do you
4 also have an agreement with the United States as far
5 as the term of years that you would be facing when
6 you're sentenced?

7 A. Yes, I do. It was a maximum of seven, a
8 minimum of six.

9 Q. Do you see there -- and I'm looking at
10 page 6 again of your plea agreement -- that you're
11 looking at a range of six to seven years,
12 approximately?

13 A. Yes.

14 Q. Now, did you also sign an addendum for
15 purposes of possible cooperation?

16 A. Yes, I did.

17 MS. ARMIJO: Your Honor, at this time I
18 would move in Exhibit 750.

19 THE COURT: Any objection?

20 MR. BENJAMIN: No, Your Honor.

21 THE COURT: Not seeing or hearing any
22 objection, Government's Exhibit 750 will be admitted
23 into evidence.

24 (Government Exhibit 750 admitted.)
25

1 BY MS. ARMIJO:

2 Q. And is this the addendum to your plea
3 agreement?

4 A. Yes, it is.

5 Q. And what is your understanding of this
6 addendum? What is your belief as to how it would
7 work, if at all?

8 A. That if I chose to cooperate, that I would
9 be used like right now, for this proceeding.

10 Q. Okay. And does it -- is it your belief
11 that you have to testify truthfully?

12 A. Yes, it is.

13 Q. And it was something that was a difficult
14 decision for you to make?

15 A. Yes, it is.

16 Q. And does this indicate -- I'm looking at
17 Exhibit Number 750 -- March 29 of 2018?

18 A. Yes.

19 Q. And that's when you signed and you pled
20 guilty in this case?

21 A. It is.

22 Q. Now, going back to calls, have you had a
23 chance to listen to various calls? Let me ask a
24 couple other questions. Other than this case, do
25 you have any criminal felony convictions?

1 A. No, I don't.

2 Q. Do you have a pending warrant out of
3 Los Lunas?

4 A. I do.

5 Q. And what's the charge in that case?

6 A. It's for a res burg. A residential
7 burglary.

8 Q. Okay. And you have not been convicted of
9 that?

10 A. I have not been convicted, no.

11 Q. So you don't have any convictions?

12 A. I have no convictions.

13 Q. And do you still have your tablet?

14 A. I do.

15 Q. Was it provided to you as part of the
16 discovery in this case?

17 A. Yes, it was.

18 Q. And you haven't in any way abused your
19 tablet?

20 A. No, I haven't.

21 Q. And have you been signed up with the FBI
22 officially?

23 A. No, I haven't.

24 Q. So you are not receiving any money from
25 the FBI?

1 A. I'm not receiving any benefits, no.

2 Q. Have you had an opportunity to listen --
3 have we met in preparation for you to testify?

4 A. Yes, we did.

5 Q. As part of that, did we go over phone
6 conversations that you had with Joe Gallegos?

7 A. Yes, we did.

8 Q. Did you go over transcripts, as well?

9 A. I went over transcripts. I listened to
10 phone clips. That's pretty much it.

11 Q. Did you have an opportunity to meet with
12 your attorney alone and go over all that for your
13 court testimony?

14 A. Yes, we did.

15 MS. ARMIJO: Your Honor, at this time I
16 would move for the admission of Government's Exhibit
17 Number -- let me do it this way.

18 A. Did you have phone conversations with him
19 on December 17 of 2016?

20 A. Yes, I had.

21 Q. Did you listen to those conversations?

22 A. I did.

23 Q. And are those two clips that you listened
24 to where you recognized the voices?

25 A. Right, yes.

1 MS. ARMIJO: At this time, Your Honor, the
2 United States would move for the admission of
3 Exhibits 950 and 951.

4 THE COURT: All right. Any objections to
5 950 and 951?

6 MR. BENJAMIN: Your Honor, as a foundation
7 issue, no. But I don't know whether they're
8 relevant or whether they're 401, simply because I
9 haven't received them. I have hundreds of calls,
10 but I don't know what 950 and 951 are.

11 THE COURT: Why don't you approach and
12 I'll make the decision as to relevancy.

13 (The following proceedings were held at
14 the bench.)

15 THE COURT: What are these going to say?

16 MS. ARMIJO: And Your Honor, these are the
17 first two of several clips that I have. I have
18 indicated to Mr. Benjamin on break that I had
19 several clips. And he never at that time said:
20 "Can I listen to them." I certainly would have --

21 THE COURT: What are they going to say?

22 MS. ARMIJO: The first two clips I have,
23 the importance and relevance of that is where Joe
24 Gallegos talks about disrespecting and in reference
25 to like being disrespected. The first clip that

1 I'll play is 951. He's talking about he said, "Let
2 the homies know," he talks about the homies are --
3 the homies know, you know, which ones to ask. So
4 he's telling us specifically to ask homies to do
5 something on his behalf.

6 THE COURT: I think there's enough
7 relevancy there to admit them.

8 MR. BENJAMIN: Your Honor, I've listened
9 to these calls. And more importantly, they've
10 provided summaries of these calls. And I realize
11 that the Court is going to say there is cause, but
12 these are stretching the interpretation of
13 relevance. Most of these calls -- and I realize at
14 this point in time the Court is inclined to admit
15 them. But for instance, they're specific calls that
16 were provided in March, conversations with
17 Ms. Gutierrez. They and I are not listening to the
18 same -- I'm looking at her list, and it doesn't look
19 like she's going to admit any March calls. That was
20 the example. It's on the top of my head, Your
21 Honor.

22 THE COURT: It doesn't look like any of
23 those are going to be admitted. Let's take them one
24 at a time.

25 Hi, Ms. Arellanes.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. So I'll admit
4 Government's Exhibits 950 and 951 into evidence.

5 (Government Exhibits 950 and 951
6 admitted.)

7 MS. ARMIJO: Actually, if we could first
8 play Exhibit Number 951 first.

9 (Tape played).

10 BY MS. ARMIJO:

11 Q. All right. Now, we heard two voices
12 there. Just for the record, it's a male and a
13 female. Do you know whose voices those are?

14 A. Yes, it's my voice and Joe's voice.

15 Q. Okay.

16 (Tape played.)

17 Q. All right. This is part of a conversation
18 you had with him --

19 THE COURT: Hold on.

20 MR. BENJAMIN: Your Honor, I would reurge
21 my relevance objection, and essentially vague, and
22 additionally relevance and vague, based upon having
23 read the transcript now.

24 THE COURT: All right. Overruled.

25

1 BY MS. ARMIJO:

2 Q. I'm going to go back up to lines 4 and 5,
3 not to play, but so you can see it there on the
4 screen. Do you see that?

5 A. Yes, I do.

6 Q. And does Joe Gallegos tell you, "Let the
7 homies know, you know, which ones to tell"?

8 A. Yes, he does.

9 Q. And just -- is this part of a 20-minute,
10 approximately, conversation?

11 A. Yes, it is.

12 Q. I'm also going to play -- now, this is
13 December 12 of 2015. Did you have two different
14 conversations?

15 A. Yes, I did.

16 Q. I'm now going to play Exhibit Number 950.
17 (Tape played.)

18 Q. All right. And again, who was talking
19 there?

20 A. It was Joe and I.

21 Q. And in reference to the last lines there,
22 does Joe talk about disrespecting somebody?

23 A. Yes, he's talking about me being
24 disrespected, and him being disrespected, because
25 somebody keeps breaking into the house. And this is

1 what the whole conversation is about. It's about
2 somebody breaking in. And he wants me to confront
3 them so that it will stop.

4 Q. And did you have another conversation with
5 him on December 5th of -- sorry, January 5th of
6 2016?

7 A. Yes, I did.

8 Q. And also on January 6, did you talk to
9 him, as well?

10 A. Yes, I did.

11 MS. ARMIJO: And Your Honor, I don't know
12 if you want us to approach at this point.

13 MR. BENJAMIN: Your Honor, can I get a
14 running objection?

15 THE COURT: You may. Thank you,
16 Mr. Benjamin.

17 All right. Did you want to admit -- move
18 them, then?

19 MS. ARMIJO: Yes. 953, 954, and 955.

20 THE COURT: All right. Any other
21 objection? Not hearing any, Government's Exhibits
22 953, 954, 955 will be admitted into evidence.

23 (Government Exhibits 953, 954, and 955
24 admitted.)

25 THE COURT: Ms. Armijo.

1 MS. ARMIJO: And Your Honor, I was
2 reminded by Mr. Castellano, can you instruct the
3 jury as to the recordings, that they will not have
4 the transcript, and that the recordings are what
5 will go back?

6 THE COURT: Let me get the wording.

7 During this trial you may have heard sound
8 recordings of certain conversations. These
9 conversations were legally recorded. They are a
10 proper form of evidence, and may be considered by
11 you as you would any other evidence.

12 You were also given transcripts on the
13 screen of those recorded conversations. Keep in
14 mind that the transcripts are not evidence. They
15 were given to you only as a guide to help you follow
16 what was being said. The recordings themselves are
17 the evidence. If you noticed any differences
18 between what you heard on the recordings and what
19 you read in the transcripts, you must rely on what
20 you heard, not what you read. If you could not hear
21 or understand certain parts of the recordings, you
22 must ignore the transcript as far as those parts are
23 concerned.

24 Ms. Armijo.
25

1 BY MS. ARMIJO:

2 Q. When Joe Gallegos was arrested, do you
3 recall approximately what time that was in the day?

4 A. It was about four or five o'clock in the
5 morning.

6 Q. And what were you doing?

7 A. I was sleeping.

8 Q. And do you recall what he was doing?

9 A. He was setting up the cameras outside.

10 Q. What kind of cameras?

11 A. Like home surveillance kind of cameras.

12 Q. How is it that you were woken up that
13 morning?

14 A. A loud bang. They were throwing
15 concussion grenades at the house. That's how I woke
16 up. And he went running into the room to let me
17 know that the cops were here.

18 Q. Okay. And what happened at that point?

19 A. At that point he was letting me know that
20 the cops were here. I was waking up. He shut the
21 door for a few minutes. He handed me a handgun to
22 put away, and gave me some of the drugs to hide and
23 stash, and then we walked out of the bedroom with
24 our hands up.

25 Q. And after he was taken into custody, at

1 this point did you actually have a phone
2 conversation in reference to him about the firearms?

3 A. Yes, I did.

4 MS. ARMIJO: At this time I'd like to play
5 953.

6 (Tape played.)

7 Q. All right. And I stopped it right here
8 where it says, "Yeah," and it says, "Okay, yeah, I
9 gave you that one that night." And before it says,
10 "I traded a little double." Do you know what this
11 is in reference to?

12 A. Yes, it's the handgun that he had me put
13 away that night when the cops came.

14 Q. And what's the "little double"?

15 A. It was a handgun that he had also, but he
16 traded it?

17 (Tape played).

18 Q. All right. And you asked a question:
19 "The other one" -- I'm sorry, you asked the
20 question: "I'm also -- how many bigger ones are
21 there?" What are you referring to?

22 A. I'm referring to rifles, muzzle loaders to
23 be exact. I purchased a muzzle loader. And he was
24 showing me how to load it and how to work it.

25 Q. And is that what he says in reference to

1 the other one, the other one was already --

2 A. That's the one, because it was already
3 loaded.

4 Q. Okay.

5 (Tape played.)

6 Q. And up there previously in the transcript
7 there where it's line 08, are you saying the one
8 that was easier to hit somebody in the head with
9 instead of doing all that?

10 A. Yeah, I'm talking about the muzzle loader.

11 Q. Okay. Was it significant in size?

12 A. No, it was just, you have to load it with,
13 like, these little beebees. And you have to pack it
14 in. It's complicated. By the time you do all that,
15 it is easier to hit somebody in the head with it
16 than to load it and shoot it.

17 Q. Is that what you were talking about?

18 A. That's what I was referring to, yes.

19 Q. And then did you have another conversation
20 with him on January 6?

21 A. Yes, I did.

22 Q. All right. If we could go to Exhibit
23 Number 954.

24 (Tape played.)

25 Q. And in this conversation, are you

1 three-waying a call?

2 A. Yes, I am.

3 Q. And who is Carson?

4 A. He's a friend of mine that lives in
5 Los Lunas, as well.

6 Q. Okay, and so do you get him on the phone?

7 A. Yes, I do.

8 Q. Okay.

9 (Tape played.)

10 A. Now, is that Carson's voice that we hear?

11 A. Yes, it is.

12 Q. And was that Joe talking about he's
13 disrespecting?

14 A. Yes, it is. It's somebody that's coming
15 into the house constantly and breaking into the
16 house and stealing.

17 Q. Okay. And there is a reference to Morgan.
18 Do you know who Morgan is?

19 A. She was an ex-girlfriend of Joe's.

20 Q. Do you know her last name?

21 A. Ramirez.

22 Q. Okay. And is that -- is this in
23 reference -- is that Morgan who is being referenced?

24 A. Yes, it's her and George coming into the
25 house constantly and breaking in.

1 Q. Did you ever see them do it?

2 A. I haven't seen them do it, but there's a
3 lot of things that make me feel like it was them.

4 Q. You have a conversation about it, but did
5 you ever check to see?

6 A. He had a lot of things that looked like
7 that belonged to Joe. But it's hard to say if those
8 tools were exactly Joe's. But there was --

9 Q. What is George's last name?

10 A. Bond.

11 Q. Okay. And so when -- up there -- and
12 we'll go on -- it says the "little homie 007"?

13 A. We're referring to George Bond.

14 Q. George Bond?

15 A. Yes.

16 Q. Do you know if George Bond is in the gang?

17 A. He's in a gang, yes.

18 Q. Do you know what gang he is in?

19 A. He's Sureno.

20 Q. All right. And if we could continue.

21 (Tape played.)

22 Q. And then did you continue talking to him
23 after he talked to George?

24 A. You mean after he talked to Carson?

25 Q. After he talked to Carson.

1 A. Yes, I did. There should be another phone
2 call.

3 Q. If we could play 955.

4 (Tape played.)

5 Q. All right. Was that Joe saying, "I get
6 all my homies from the prison back from in what it
7 was 15 years ago"?

8 A. He's talking about when he used to be
9 locked up.

10 Q. I'm just talking -- is that what he's
11 referring to?

12 A. Yes, it is.

13 Q. Now, did you also have a conversation with
14 him on January 12?

15 A. Yes, I did.

16 MS. ARMIJO: And at this time I'd move for
17 the admission of 957.

18 THE COURT: Same position, Mr. Benjamin?

19 MR. BENJAMIN: Yes, Your Honor.

20 MS. TORRACO: Your Honor, could we
21 approach on this?

22 THE COURT: You may.

23 (The following proceedings were held at
24 the bench.)

25 MS. TORRACO: I think there is more of the

1 gang coming up. Your Honor, on behalf of Andrew
2 Gallegos, I'm very concerned about the spillover
3 effect of hearing these types of statements from Joe
4 Gallegos and the jury then using them against
5 Andrew, because Andrew is associated with him on
6 Counts 4 and 5. I know you've given one limiting
7 instruction, and we appreciate that. We would ask
8 that you give a limiting instruction after every
9 single one of the audio recordings.

10 I know in federal court it's not
11 appropriate to just orally raise motions for
12 severance. But I think I've raised those many
13 times, and I would ask that that be a standing
14 motion. This is so prejudicial against Andrew, who
15 is not even associated on this count. Thank you.

16 THE COURT: All right. I'll give a
17 limiting instruction after each call. If I forget,
18 let me know.

19 And I'll deny any motion to sever.

20 MS. TORRACO: Thank you very much.

21 (The following proceedings were held in
22 open court.)

23 THE COURT: All right. I will give you
24 this instruction. I'll give it after each one of
25 these calls, because they are calls involving

1 Mr. Joe Gallegos. But you cannot use the words of
2 Mr. Gallegos, Mr. Joe Gallegos, against any other of
3 the defendants and any other gentlemen in this case.
4 So you can only use these calls in your
5 deliberations of the charges against Mr. Joe
6 Gallegos and not of the other gentlemen, any of the
7 other defendants.

8 All right. Ms. Armijo.

9 MS. ARMIJO: All right. Your Honor, and I
10 believe --

11 THE COURT: So no other objection on
12 Government's Exhibit 957, I will admit Government's
13 Exhibit 957 into evidence.

14 (Government Exhibit 957 admitted.)

15 THE COURT: Ms. Armijo.

16 MS. ARMIJO: Thank you. May we play it?

17 (Tape played.)

18 BY MS. ARMIJO:

19 Q. All right. And are we back to hearing
20 your voice and Joe Gallegos?

21 A. Yes, you are.

22 Q. Okay. And at the beginning of this you
23 talk about, "Huera called me last night and she said
24 she got your letter"; right?

25 A. Yes.

1 Q. Do you recall that?

2 A. Yes, I do.

3 Q. Who are you referring as far as Huera?

4 A. To Brandy Rodriguez.

5 Q. All right. And was this on January 12 of
6 2016?

7 A. Yes, it is.

8 Q. All right.

9 (Tape played.)

10 Q. All right. Do you know from your phone
11 conversations whether or not Joe believed that
12 Morgan was a, quote, snitch? Do you recall that?

13 A. I don't recall that.

14 Q. Did you have a conversation on January 14,
15 2016?

16 A. I believe so.

17 MS. ARMIJO: At this time, Your Honor, I'd
18 like to move for the admission of Exhibit Number 958
19 and 959.

20 THE COURT: Any other objections on those
21 other than what I've heard, Mr. Benjamin?

22 MR. BENJAMIN: No, Your Honor. Thank you.

23 THE COURT: All right. So Government's
24 Exhibits 958 and 959 will be admitted into evidence.

25 (Government Exhibits 958 and 959

1 admitted.)

2 THE COURT: And again, on these calls you
3 can only use these calls in your deliberations
4 against Joe Gallegos and not against any other
5 defendants.

6 All right, Ms. Armijo.

7 BY MS. ARMIJO:

8 Q. Now, who is Jackie?

9 A. Jackie is an ex-girlfriend of George.

10 Q. And is there -- I guess let's play this
11 and then we can talk about it. Let's play Exhibit
12 Number 959.

13 (Tape played.)

14 Q. Which one was the snitch; do you know?

15 A. Jackie.

16 Q. Okay. And the Morgan that is referred
17 to -- is that Morgan Ramirez still?

18 A. Yes, it is.

19 Q. And was Morgan Ramirez tied to George?

20 A. They hung out all the time.

21 Q. Then did you have a conversation with Joe
22 Gallegos on the 20th of January?

23 A. Yes, I did.

24 MS. ARMIJO: And at this time I'd like to
25 move in Exhibit Numbers 960 and 961.

1 THE COURT: Same objection, Mr. Benjamin?

2 MR. BENJAMIN: Please, Your Honor.

3 THE COURT: Any other comments from
4 defendants? Then Government's Exhibit 960 and 961
5 will be admitted into evidence.

6 (Government Exhibits 960 and 961
7 admitted.)

8 THE COURT: And again, with these calls,
9 they can only be used in your deliberations against
10 Mr. Joe Gallegos and not against any of the other
11 defendants.

12 Ms. Armijo.

13 BY MS. ARMIJO:

14 Q. Now, you mentioned that you knew that at
15 some point Joe was facing some state charges; is
16 that correct?

17 A. That's correct.

18 Q. Do you know who his lawyer was?

19 A. Yes, it was Brandon McDonald.

20 Q. And had Joe asked you to do anything in
21 reference to that?

22 A. Yes. He wanted me to get ahold of his
23 lawyer to find out what was going on with the state
24 case because he wanted it to go away.

25 Q. He wanted the state case to go away?

1 A. Yeah, he was hoping it would go away.

2 Q. And was Jose Gomez the victim in that
3 case?

4 A. I believe so. I'm not sure.

5 Q. Okay. If we could play first 960.

6 (Tape played.)

7 Q. And is he asking you to get ahold of him
8 here?

9 A. Yes, he is.

10 (Tape played.)

11 Q. And when he says, "Get ahold of him. That
12 would be good, cause if all my shit is gone," is he
13 referring to his case?

14 A. I believe so, yes.

15 (Tape played.)

16 Q. And is that you telling him after he
17 refers to that that you got him?

18 A. Yes, it is.

19 Q. All right.

20 (Tape played.)

21 Q. And in the same conversation, which was
22 January 20, does he also talk to you -- hold on. Do
23 you refer to Huera and -- well, let me ask you. Do
24 you know if Huera grew up there, would she have
25 grown up in the same area as Joe Gallegos lived?

1 A. I believe so. I'm not sure.

2 Q. All right. Lastly we're going to play
3 clip 961.

4 MR. BENJAMIN: Objection, foundation and
5 speculation, based upon the last answer from the
6 witness, Your Honor, if this is attempting to elicit
7 that.

8 THE COURT: Well, I think that was a
9 foundation question. She doesn't know. But what
10 does that have to do --

11 MR. BENJAMIN: Well, I think the witness
12 is the individual that's supposed to be testifying,
13 Your Honor, and now we're going to hear an audio
14 call that the witness wasn't able to lay a
15 foundation for.

16 BY MS. ARMIJO:

17 Q. Is this part of a phone conversation that
18 you had with Joe Gallegos?

19 A. If it was on the 20th, yes, it is.

20 Q. It's the continuation of the same call?

21 A. Just a different clip; right?

22 Q. Yes.

23 A. Yes, it is.

24 THE COURT: I think the call is in
25 evidence and we're just going to hear a clip of it.

1 Overruled.

2 (Tape played.)

3 Q. Okay. Is he talking to tell you about,
4 "Tell Huera about Dan Dan, and he's next door"?

5 A. Yes.

6 Q. And do you know who Dan Dan is?

7 A. Yes. He's a defendant in the case.

8 Q. Was he charged in this case?

9 A. Yes, he was.

10 Q. Do you know his last name?

11 A. Sanchez.

12 Q. All right.

13 (Tape played.)

14 Q. And there is a mention of an Oso right
15 there?

16 A. Um-hum.

17 Q. Was he saying that Huera was hanging
18 around with Oso?

19 A. Yes.

20 Q. Do you know Oso's name?

21 A. Paul Rivera.

22 Q. All right. Now, and those calls were in
23 December and January of 2016?

24 A. Yes, they were.

25 Q. Now, we already talked about you having

1 pled guilty --

2 THE COURT: On the calls, let me just
3 remind the jury that they can't use any of the calls
4 against any other defendant, other than Mr. Joe
5 Gallegos, and they can't be used against any of
6 the -- discussion of the charges against any of the
7 other defendants.

8 All right, Ms. Armijo.

9 Q. Going to February 27 of 2016, do you
10 recall where you were that morning?

11 A. Yes, I do.

12 Q. Where were you?

13 A. I was in a few different spots in that
14 morning. I was walking, I was at a friend of
15 mine's, and then I --

16 Q. Let me be more specific. You know what
17 you were charged and pled guilty for; correct?

18 A. Yes, I do.

19 Q. At some point in time did you have a
20 conversation with Brandy Rodriguez?

21 A. Yes, I did.

22 Q. And where was that conversation at?

23 A. That was at 04 Erin Court.

24 Q. Okay. Were you living there?

25 A. Yes, I was.

1 Q. Had you been out -- and when you had this
2 conversation, what part of the day was it?

3 A. It was morning.

4 Q. And who else was at 4 Erin Court when you
5 had this conversation with Brandy Rodriguez?

6 A. Santos Gonzalez and Paul Rivera.

7 Q. And just so that we're clear, the Brandy
8 Rodriguez that you spoke to that morning -- is that
9 the same person that you have been referring to as
10 Huera in the phone conversations with Joe Gallegos?

11 A. Yes, it is.

12 Q. Did you have a conversation with Brandy
13 Rodriguez?

14 A. Yes, I did.

15 Q. And what did you tell her in reference to
16 Jose Gomez' location?

17 MR. BENJAMIN: Objection, hearsay, Your
18 Honor.

19 THE COURT: I think this is one of the
20 ones I've already ruled on; correct?

21 MR. BENJAMIN: Your Honor, we just renew
22 our prior objection.

23 THE COURT: I understand. Overruled.

24 A. I was letting her know where Jose Gomez
25 was, and we were just talking shit about him.

1 BY MS. ARMIJO:

2 Q. So did you tell her where you believed he
3 was at at that present time?

4 A. Yes, I did.

5 Q. And after you told them, then, when -- you
6 told Brandy or did you tell all three of those
7 people?

8 A. I said it in general, so I said it to all
9 three.

10 Q. And after you told all three, did they
11 leave for Erin Court?

12 A. Yes, they did.

13 Q. And where did they go, if you know?

14 A. They went to Charlene Parker's house,
15 where Jose Gomez was.

16 Q. How did they get there?

17 A. They used my truck.

18 Q. Did you stay back?

19 A. Yes, I did.

20 Q. When they left the house, do you know if
21 they had anything that could be used as a weapon?

22 A. I didn't see anything.

23 Q. Now, at some point did they come back?

24 A. Yes, they did. They came back rather
25 quickly, actually. They weren't gone very long.

1 Q. I'm not going to ask you anything that
2 they said, but what was their demeanor like?

3 A. They were in a rush to get out of there.
4 They wanted me to take them home.

5 Q. Did you notice anything as far as her
6 appearance or anything?

7 A. They looked fine to me. They just were in
8 a rush to get out of there.

9 Q. Now, and that was February 27 of 2016?

10 A. Yes, it was.

11 Q. Now, at some point were you aware that --
12 after that date, were you aware that you were wanted
13 by the FBI?

14 A. I was aware that -- the same day that they
15 came looking for me, yes.

16 Q. Do you recall approximately when that was?

17 A. I think it was April 21.

18 Q. Were you aware that other people -- when
19 you say, "They came looking for me," do you know
20 where the FBI went?

21 A. They went first, I think, to 4 Erin Court,
22 and then they went to a place in Belen the same day
23 looking for me.

24 Q. And were you aware that they were looking
25 for you?

1 A. Yes, I was afterwards, yes.

2 Q. Did you turn yourself in?

3 A. No, I didn't.

4 Q. How long was it before you were arrested?

5 A. It was about four months.

6 Q. Were you aware of any news media regarding
7 your arrest?

8 A. Yes, I was.

9 Q. And did you turn yourself in?

10 A. No, I didn't. I intended to, but I never
11 did.

12 Q. Were you aware -- did you have an idea of
13 what it was in reference to?

14 A. I knew what it was in reference to. I
15 just didn't understand why and how I was implicated.
16 It just didn't make sense to me. I have trust
17 issues with cops, and I wasn't going to turn myself
18 in until I knew what was going on exactly.

19 Q. So you never turned yourself in?

20 A. I never did.

21 Q. And eventually you were arrested; is that
22 correct?

23 A. Yes, I was.

24 Q. Have you been in custody ever since then?

25 A. Ever since then, yes.

1 Q. And up until March 29 of this year, were
2 you pending trial with Joe Gallegos?

3 A. Yes, I was.

4 Q. And do you recall if there was a court
5 hearing in which -- well, let me ask you this. Were
6 there pretrial hearings involved in this case in
7 which you would be present with Joe Gallegos and
8 other defendants who were pending charges?

9 A. Yes.

10 Q. Did you have an opportunity to actually,
11 you and Joe Gallegos, to kiss?

12 A. Yes, I did.

13 MS. ARMIJO: All right. Your Honor, at
14 this time I would move for the admission of 946.

15 THE COURT: Any objection on 946?

16 MR. BENJAMIN: No, Your Honor.

17 THE COURT: Not hearing any other
18 objection, Government's Exhibit 946 will be admitted
19 into evidence.

20 (Government Exhibit 946 admitted.)

21 BY MS. ARMIJO:

22 Q. All right. And I'm going to actually stop
23 the video real quick so they can get some
24 perspective here. Is the date 3/14 of 2018?

25 A. I'm not sure.

1 Q. Can you look up there and see at the top
2 of the exhibit, is there a date there?

3 A. Yes, there is.

4 Q. Okay. Does it look like it's March 14 of
5 2018?

6 A. Yes, it is.

7 Q. Are you allowed to have physical contact
8 with another inmate?

9 A. No, we're not. The opportunity arose, and
10 we took it.

11 Q. All right. Go ahead. Now, who is the
12 woman that we see?

13 A. That's me.

14 Q. All right. And was that -- who were you
15 kissing?

16 A. Joe Gallegos.

17 Q. Did you get in trouble for that?

18 A. Yes, I did. We both did.

19 Q. Fine. Do you know who Frankie Gallegos
20 is?

21 A. I know that's his brother, Joe's brother.

22 Q. Do you have any contact with him or did
23 you ever email him?

24 A. I spoke with him on the phone.

25 Q. When did you speak to him on the phone?

1 A. He would call just to see what was going
2 on with Joe and see how Joe was doing being locked
3 up.

4 Q. Was this after Joe's arrest?

5 A. This was after Joe's arrest, yes.

6 Q. Did you ever relay any messages between
7 the two?

8 A. No. Just, "Your brother said, 'Hang in
9 there, and it's going to be okay.'" That was about
10 it.

11 MS. ARMIJO: May I have a moment, Your
12 Honor?

13 THE COURT: You may.

14 MS. ARMIJO: Pass the witness. Thank you,
15 Your Honor.

16 THE COURT: Thank you, Ms. Armijo.

17 Mr. Benjamin, do you have
18 cross-examination of Ms. Gutierrez?

19 MR. BENJAMIN: Yes, Your Honor.

20 THE COURT: Mr. Benjamin.

21 CROSS-EXAMINATION

22 BY MR. BENJAMIN:

23 Q. I guess I can't say morning, ma'am. How
24 are you doing?

25 A. Good. How are you?

1 Q. Okay. Kind of picking up on the last line
2 of questioning, do you remember the first time you
3 talked to me?

4 A. Yes, I do.

5 Q. Okay. When was that?

6 A. It was for the arraignment for Joe.

7 Q. Right. Actually, I guess I was wrong. I
8 didn't remember that time.

9 A. Actually, it was before that, because we
10 planned to meet up for the arraignment for Joe.

11 Q. Okay. You're right. I had forgotten
12 that. But we've had, essentially, contact over
13 probably the last two and a half years, probably; is
14 that fair?

15 A. That's correct.

16 Q. And forgive me, but I think I need to
17 point out, because it doesn't come out when Ms. Bean
18 talks about it, but we just saw the picture of you
19 kissing Mr. Gallegos; correct?

20 A. That's correct.

21 Q. And at the beginning, you talked about
22 essentially -- or I'm sorry, one of the questions,
23 early on, we could see you were visibly emotional;
24 correct?

25 A. Yes.

1 Q. Fair to say you still have feelings for
2 Joe Gallegos?

3 A. I do.

4 MR. BENJAMIN: Your Honor, if I may, I
5 forgot a marker. I was going to grab a marker, and
6 then I'm going to need the easel.

7 THE COURT: You may.

8 MR. BENJAMIN: Your Honor, may I approach
9 the easel?

10 THE COURT: You may.

11 BY MR. BENJAMIN:

12 Q. We've heard a lot of names, so I want to
13 straighten out some of the names. Okay?

14 A. Okay.

15 Q. I'm going to ask you, except for George
16 Bond, I'm going to ask you a couple other people's
17 names. I'm just going to get their first name,
18 because I don't think we necessarily need their last
19 names.

20 A. All right.

21 Q. Who is your son?

22 A. My son.

23 Q. Yes.

24 A. Sabastian.

25 Q. Thanks. I think that's spelled right?

1 A. No.

2 Q. How do you spell it?

3 A. S-A-B-A-S-T-I-A-N.

4 Q. I apologize. I've see it written a whole
5 bunch. I haven't written it.

6 And you know George Bond; correct?

7 A. Yes, I do.

8 Q. And we saw him referred to in the
9 transcript as 007?

10 A. Yes.

11 Q. And that comes from the movie?

12 A. Right.

13 Q. Just in case anybody missed that; right?

14 A. Okay.

15 Q. Who is George Bond's child?

16 A. That would be my daughter-in-law, my son's
17 girlfriend, Nina, stepdaughter.

18 Q. That's his stepdaughter?

19 A. That's his stepdaughter.

20 Q. But essentially you refer to as his
21 daughter; right?

22 A. Right.

23 Q. And you said Sabastian and Nina are in a
24 relationship?

25 A. In a relationship; they have a baby.

1 Q. How long have you known George?

2 A. I've known him for about maybe four years,
3 about four years or so.

4 Q. Okay. And fair to say that there's
5 probably been a lot of ups and downs in that
6 relationship?

7 A. Oh, yes. Oh, yes.

8 Q. George is an interesting character?

9 A. He's interesting, yes. He's a character.

10 Q. And there was a lot of jail calls that
11 were played. I don't necessarily want to replay
12 them, but if there is something out of the jail call
13 that you need, please let me know. Okay?

14 On January 5th of 2016, there was a call
15 that essentially got wrote down, "He'll watch my
16 back" and it was a call where you did -- describe
17 what a three-way call is, please.

18 A. A three-way call is where somebody calls,
19 like -- I wasn't in jail at the time, so Joe would
20 call me, and then I would conference-call another
21 party and get them on the line with us.

22 Q. And that's something that happens probably
23 regularly for people in jail; right?

24 A. Oh, yes. Yes.

25 Q. So you called Carson, who wasn't in

1 custody, either?

2 Q. That's right.

3 Q. And we heard some testimony -- I'm sorry,
4 audio about George Bond; right?

5 A. That's correct.

6 Q. And Joe was a little upset with George;
7 right?

8 A. Oh, yes.

9 Q. Why?

10 A. Because we believed that George was the
11 one coming into the house and robbing.

12 Q. Okay. And there were calls that were
13 talking about who was getting in the house?

14 A. Yes, there was a spot that only he knew
15 about, that only George knew about, and that's how
16 they were getting in.

17 Q. And we heard kind of a brief snippet.
18 Having listened to all these calls, is it fair to
19 say that probably during the month of January, that
20 took up most of your air time?

21 A. Yes, it did.

22 Q. You were upset because it was cold?

23 A. Right.

24 Q. And you were going around and every
25 time -- tell me if I mischaracterize this -- but

1 every time you turn around, something was missing
2 from the trailer?

3 A. Every time, yes.

4 Q. And Nina and Sabastian were together at
5 this time; right?

6 A. Yes, they were.

7 Q. And so this is somebody that's a family
8 member or quasi family member that's stealing from
9 you; right?

10 A. Yes.

11 Q. And how did Joe feel about that?

12 A. Joe was not happy about it. He was not
13 happy about it at all. Neither one of us were.

14 Q. Okay. Did you find George Bond parked
15 outside the house at one time?

16 A. Yes, I did.

17 Q. How many times?

18 A. There was one that I remember. He was
19 actually there -- he wanted to fight with my son.

20 Q. Okay George is somewhat -- a lot older?

21 A. George is older -- not too much older, but
22 he's older, and he can be violent.

23 Q. In listening to your calls, is it fair to
24 say you also seemed to try to keep Sabastian off to
25 the side and away from some things?

1 A. Yes.

2 Q. And so I think I asked you that, but how
3 often did you talk to Joe?

4 A. We talked every day except for weekends.

5 Q. And how long were the calls?

6 A. They were about 20 minutes. Sometimes we
7 talked once or twice.

8 Q. When you say they were 20 minutes, is
9 there a reason?

10 A. Yeah, because he was in jail. And they
11 only let you talk about 15, 20 minutes.

12 Q. Right. And then they shut off?

13 A. Then they shut off, yes.

14 Q. And so Joe didn't -- on the same call we
15 heard him talking about Morgan, and you identified
16 that as Morgan Ramirez; right?

17 A. That's correct.

18 Q. She's another one that can get under his
19 skin?

20 A. Oh, yes.

21 Q. Have you ever personally met Morgan?

22 A. Yes, I have.

23 Q. So personally, and then also just having
24 been in a relationship with Joe, you know that?

25 A. Right.

1 Q. Is it fair to say that Joe thought Morgan
2 was stealing from him, as well?

3 A. Yes.

4 MS. ARMIJO: Objection, foundation.

5 Q. To the extent that you --

6 THE COURT: You might ask her how she
7 knows that.

8 Q. How do you know that, or why do you think
9 that?

10 A. They were always together, and --

11 Q. Let me stop you real quick. They --

12 A. George and Morgan were always together.

13 Q. Okay.

14 THE COURT: Overruled.

15 Q. I'm going to jump to 959, which was a call
16 on January 12. And that probably doesn't mean a
17 whole lot to you. But that call starts out with
18 George -- and then it says "UI," which is
19 unintelligible -- "homies two face"; right?

20 A. Right.

21 Q. You had described George as being in a
22 gang. What gang was George in?

23 A. Sureno.

24 Q. Okay. And that's different than the SNM;
25 right?

1 A. Oh, yes.

2 Q. Okay. And so when he says, "George a
3 homie," that's not saying that he's an SNM member?

4 A. That's correct. The homie means a friend.

5 Q. And talking about that same call, are you
6 aware of why Joe may have been excited or worked up
7 about Jackie?

8 A. Yeah, I'm aware.

9 Q. Okay. There is a personal side to that;
10 right?

11 A. There is a personal side, yes.

12 Q. What is that?

13 MS. ARMIJO: Objection, calls for hearsay
14 and foundation.

15 THE COURT: Well, you'll have to lay some
16 foundation and see if she knows from some source
17 other than a hearsay source.

18 BY MR. BENJAMIN:

19 Q. Are you personally aware of what the
20 reason is, the history between Jackie, George, and
21 Joe?

22 A. Yes, I'm aware of it.

23 Q. Okay. And what is that?

24 A. Joe used to see Jackie. And George kind
25 of took Jackie from the house, saying that she was a

1 snitch. So Joe --

2 Q. Then what happened?

3 A. Joe let her go. And George and Jackie
4 ended up falling in love.

5 Q. Okay.

6 A. He kind of stole his girl.

7 Q. Okay.

8 MS. ARMIJO: Objection, foundation. If
9 she saw that personally. I don't know.

10 THE COURT: Why don't you ask that
11 question?

12 BY MR. BENJAMIN:

13 Q. Are you aware of these facts personally,
14 or something that somebody told you?

15 A. A little bit of both.

16 Q. And you've known George, you said, for how
17 long?

18 A. For about four years.

19 Q. Okay.

20 MS. ARMIJO: Your Honor --

21 THE COURT: I think what we'll have to do
22 is hear the answer again. She'll have to tell us
23 exactly what it was she saw personally, and then the
24 rest I'll have to exclude.

25 MR. BENJAMIN: Yes, Your Honor.

1 BY MR. BENJAMIN:

2 Q. Let me ask you this way. Have you seen
3 Joe and Jackie interact?

4 A. No, I haven't.

5 MR. BENJAMIN: I'll withdraw.

6 MS. ARMIJO: Then Your Honor, I move to
7 strike.

8 THE COURT: If you don't want to ask the
9 question the way I asked you to, I'll have to strike
10 her entire answer.

11 MR. BENJAMIN: I apologize. I didn't
12 write down the answer. I'll withdraw it.

13 THE COURT: All right. Well, then,
14 Ms. Gutierrez' answer to the lengthy one immediately
15 before that last one is struck from the record and
16 you'll disregard it.

17 All right. Mr. Benjamin.

18 BY MR. BENJAMIN:

19 Q. There was a call that we heard where
20 you -- on January 20th of 2016 that was identified
21 and entered as 960, where you were asked to contact
22 a Brandon McDonald that was identified as Joe's
23 attorney; right?

24 A. That's correct.

25 Q. Are you aware of why Joe wanted you to

1 reach out to him at that time?

2 A. Because he was worried that a warrant was
3 out for him, or something like that, so he wanted me
4 to let the lawyer know he's in federal custody and
5 wanted to find out what was going on with the state
6 case.

7 Q. An update?

8 A. An update, yes.

9 Q. Okay. Was there anything in 960 that was
10 related to the SNM?

11 A. I don't recall.

12 MR. BENJAMIN: Are you able to play 960?
13 Request permission to publish 960.

14 THE COURT: That was one of the calls;
15 correct?

16 MR. BENJAMIN: Yes, and that was entered.

17 THE COURT: You may.

18 (Tape played.)

19 BY MR. BENJAMIN:

20 Q. Is there anything in there SNM-related?

21 A. No, there isn't.

22 Q. I apologize. You had to solely listen to
23 it. We don't have the Government's transcript of
24 that.

25 So do you remember making a call on

1 January 13 -- and you have probably no idea what
2 happened on that day -- where you mentioned that you
3 had run into a Tiny?

4 A. Yes, I remember that.

5 Q. Who was with you that day?

6 A. I was at a friend's house, and my son and
7 my daughter-in-law were there also.

8 Q. And that's Sabastian and Nina?

9 A. That's Sabastian and Nina.

10 Q. And who is Tiny?

11 A. Jose Gomez.

12 Q. And you ran into him?

13 A. I ran into him. Yes, I did.

14 Q. And did you have a conversation? I'm
15 asking for a yes or no.

16 A. Yes, I did.

17 Q. And then ultimately you talked about that
18 with Joe; right?

19 A. Yes, I did.

20 Q. Do you remember what you -- what happened
21 on that phone call?

22 A. Yes, I had let him know that I had ran
23 into him.

24 MS. ARMIJO: Objection, hearsay.

25 MR. BENJAMIN: Your Honor, I move to admit

1 this under the Rule of Optional Completeness. And I
2 would ask to supplement this. I'm having technical
3 difficulties right now. I only have a transcript.
4 I would ask to move this under the Rule of Optional
5 Completeness, Your Honor.

6 THE COURT: What are you moving to admit?

7 MR. BENJAMIN: An excerpted transcript
8 from January 13, 2016, between Shauna and Joe
9 Gallegos, talking about Jose Gomez.

10 THE COURT: And this is not one of the
11 ones that is admitted?

12 MR. BENJAMIN: No.

13 THE COURT: Why don't you approach and
14 I'll find out what it's going to say.

15 (The following proceedings were held at
16 the bench.)

17 (The following proceedings were held at
18 the bench.)

19 MR. BENJAMIN: I just have a transcript.

20 THE COURT: Okay. What is it that she
21 said that relates to that that you feel like needs
22 to be complete?

23 MR. BENJAMIN: There was essentially the
24 last call that was played, and I don't have the
25 number, but it was a call that talked about Oso, and

1 that was on January 20. And they played that call,
2 and she asked him specifically if that Oso was
3 somebody that was involved in the assault on -- or
4 if Oso, as being Paul Rivera, was somebody involved
5 in the assault on Jose Gomez; and I believe left the
6 impression with the jury that that call in some way,
7 shape, or form talks about the assault on Jose
8 Gomez. This call was just a couple days prior to
9 that, and she discusses why, what happened, and that
10 she saw Jose Gomez. And as the Court read that Joe
11 Gallegos says: "Just leave him alone. Leave him
12 alone. Yeah." Once again calls somebody a piece of
13 shit. "Just leave him alone."

14 So as I told the Court, I'm going to move
15 to admit this. I had this transcribed, like the
16 Government has, and I'm having trouble with my
17 technical side, so...

18 THE COURT: What is y'all's thoughts about
19 it?

20 MS. ARMIJO: Well, it's a different call
21 entirely. And I don't think he can move the call in
22 because it's his client's statement and this
23 witness' -- it's hearsay as to him moving it in.

24 THE COURT: Well, I know that, but under
25 the Rule of Completeness, is there an argument as to

1 why that should not come in to complete the jury's
2 understanding of what they're talking about?

3 MS. ARMIJO: Yes, I think it's an entirely
4 different call. And it's days later. And it's just
5 a tiny portion. And it's other things they're
6 talking about. So I don't think it's directly
7 related to any of the portions that we have talked
8 about.

9 THE COURT: Well, it does strike me as
10 stretching the Rule of Completeness to bring in a
11 telephone call a couple days later. I'm not able to
12 really determine whether they're related or not.

13 MR. BENJAMIN: This is just a
14 clarification for the record. I'm not sure it
15 affects the Court's reasoning. It was a couple days
16 earlier.

17 MS. ARMIJO: I think it was seven days
18 earlier.

19 MR. BENJAMIN: But the issue -- it
20 specifically talks about the offense that
21 Mr. Gallegos is charged with.

22 THE COURT: I'm not sure the Rule of
23 Completeness is really intended to kind of
24 supplement either a writing or a conversation that
25 far out. It's more related to when you take

1 snippets out of a call that you should make sure
2 that it's complete.

3 So I'm going to deny the motion -- the
4 request to admit the transcript and not admit it
5 into evidence.

6 MR. BENJAMIN: And Your Honor, am I able
7 to still ask her a question? And that goes to
8 admitting it to the record. I'm planning on asking
9 her whether she made a statement on or about --

10 THE COURT: You can't just elicit it if
11 you're trying to impeach her for something, but I
12 don't think you can just elicit her out-of-court
13 statements for the truth of the matter, and I don't
14 think you can elicit Joe Gallegos' statements. It
15 may be difficult for you.

16 MR. BENJAMIN: Your Honor, so we're not
17 doing it at the bench now, I'd just like to make a
18 better argument later regarding this just as part of
19 the record, Your Honor.

20 THE COURT: Okay.

21 (The following proceedings were held in
22 open court.)

23 THE COURT: Mr. Benjamin.

24 BY MR. BENJAMIN:

25 Q. And I'd like you to take a second before

1 you answer, because I think there is going to be an
2 objection. But I think I've phrased this
3 sufficiently.

4 Based upon the calls that you had with Joe
5 Gallegos and the call specifically on the 13th, was
6 it your understanding that Joe Gallegos did not want
7 you to interact or deal with Tiny?

8 MS. ARMIJO: Objection.

9 THE COURT: Sustained.

10 MS. ARMIJO: Objection. Calls for
11 hearsay. We ask that his question be struck.

12 THE COURT: I won't strike the question,
13 but there is no answer to it, so I'll sustain the
14 objection.

15 BY MR. BENJAMIN:

16 Q. Moving to the next call at 961 that was on
17 January 20, 2016, who did you say Dan Dan was?

18 A. Daniel Sanchez.

19 Q. And how is he related?

20 A. He's related to Brandy Rodriguez. They're
21 cousins.

22 Q. Okay. And you described Joe -- Brandy
23 having a close relationship with the Gallegos
24 family; correct?

25 A. That's correct.

1 Q. And are you aware of where the Gallegos
2 family originated from?

3 A. No. I thought they were just always there
4 in Los Chavez.

5 Q. Okay. Let me ask you some kind of
6 questions from the beginning, so we'll kind of start
7 a little bit back.

8 Whose birthday is on September 21?

9 A. On September 21, that's my daughter-in-law
10 Nina's.

11 Q. You were nervous when you took the stand
12 earlier today?

13 A. Yes, very. I'm still nervous.

14 Q. And that's fair. Would it surprise you
15 that when you were asked that question the first
16 time, you said that was Sabastian's birthday?

17 A. It's the day before his birthday, my
18 son's, September 22.

19 Q. Whose birthday is February 27?

20 A. On February or September?

21 Q. February 27.

22 A. That's my younger son's birthday.

23 Q. Okay. So Sabastian's birthday is the day
24 before, the 20th?

25 A. Yes.

1 Q. One statement that came out was that
2 before December 3, 2015, you were asked about a time
3 that you and Joe were driving and he said something
4 about Jason?

5 A. That's correct.

6 Q. And I think the statement was, "If I ever
7 go to jail, it will be because of Jason"; right?

8 A. That's correct.

9 Q. Are you aware of an ice cream truck that
10 Jason was involved with?

11 A. I'm sorry?

12 Q. Are you aware of an ice cream truck that
13 Jason was involved with?

14 A. No.

15 Q. Getting back to the phone calls -- and
16 this wasn't one of them that was played -- but what
17 was one of the other favorite topics on the phone
18 calls? Fair to describe that as feeding the dogs?

19 A. Feeding the dogs and putting the skirting
20 on the trailer.

21 Q. I'm going to ask you this -- and I'm not
22 trying to imply into this, but who do you think Joe
23 liked more? The dogs or you, probably?

24 MS. ARMIJO: Objection.

25 MR. BENJAMIN: I don't know what the

1 answer will be, Your Honor.

2 THE COURT: It's not for the truth of the
3 matter. I think she can answer this question.

4 Overruled.

5 A. He loves his dogs.

6 BY MR. BENJAMIN:

7 Q. That is fair. Thank you. He was very
8 vocal about that at multiple different times; right?

9 A. Yes, very.

10 Q. Do you know where the Government got this
11 letter?

12 A. It's part of the discovery.

13 Q. But I mean, outside of it being something
14 that -- we've all learned about Bates stamps and
15 everything else--

16 A. I'm not sure, actually.

17 Q. That's fine.

18 I'm going to direct you to something that
19 you were questioned about. And do you know what
20 that word is?

21 A. Dingy.

22 Q. Dingy? Could it be clingy?

23 A. Dingy. That's me.

24 Q. Okay. I think I made a mistake earlier,
25 so I'm going to ask you: How many children do you

1 have?

2 A. I have six.

3 Q. So Sabastian is the oldest; right?

4 A. Sabastian is the oldest.

5 Q. Do you remember telephone calls between
6 you and your mom -- actually, I probably need to be
7 a little more specific -- on or around March of
8 2018?

9 A. I'm sure I did.

10 Q. And do you remember telling your mom that
11 "They have nothing" --

12 MS. ARMIJO: Objection, hearsay.

13 THE COURT: If it's being offered for the
14 truth, sustained.

15 BY MR. BENJAMIN:

16 Q. You pled guilty in this case; correct?

17 A. I did.

18 Q. And when you plead guilty, you're
19 admitting to the conduct that the Government is
20 alleging; right?

21 A. That's correct.

22 Q. And that means that you're agreeing that
23 you did something wrong. In this case, committed a
24 conspiracy to commit murder; right?

25 A. That's right.

1 Q. Do you remember on or about March of 2018
2 telling your mother --

3 MS. ARMIJO: Objection, hearsay.

4 THE COURT: It sounds like it's going to
5 be. If you want to approach, you can, but --

6 (The following proceedings were held at
7 the bench.)What is the statement?

8 MR. BENJAMIN: "They have nothing on me.
9 They have nothing on me. I mean, the people are
10 saying that, but they're not credible." I think
11 it's in direct contradiction to a guilty plea.

12 THE COURT: I think to elicit those would
13 be for the truth of the matter, so I will sustain
14 the objection.

15 MR. BENJAMIN: I would suggest that her
16 action -- that I should be allowed to impeach her
17 based on this is because her actions are different
18 than these statements.

19 THE COURT: I think you have to set her up
20 before you can impeach her with the statements. She
21 so far hasn't said anything other than she's
22 admitted so...

23 MR. BENJAMIN: That's where I'm at, Your
24 Honor. "They have nothing on me" is directly
25 contradicted by the guilty plea.

1 THE COURT: Set it up a little better and
2 maybe I'll let you ask the question.

3 (The following proceedings were held in
4 open court.)

5 BY MR. BENJAMIN:

6 Q. And you pled guilty on March 29 of 2018;
7 right?

8 A. Correct.

9 Q. And just so we're on the same page, that
10 was a little over a month ago?

11 A. Right.

12 Q. And you had a tablet; right?

13 A. That's correct.

14 Q. And the excerpts of the calls that we
15 heard today -- you were able to review those calls
16 sufficiently before testifying today?

17 A. Yes, I was.

18 Q. And you were able to -- I think it's still
19 up -- you were able to review -- you said you
20 reviewed this letter briefly, but you were able to
21 review this letter as much as you wanted; right?

22 A. That's right.

23 Q. And they asked you to review it. And then
24 you read it, and I think you said "briefly," but you
25 were able to read it as much as you wanted to;

1 nobody was telling you to start and stop, next,
2 next, next; right?

3 A. Right.

4 Q. But in making a guilty plea, you made a
5 decision to accept what the Government was saying
6 about it. And that's different than the belief that
7 you had on or about March 18 of 2018; right? Or
8 March of 2018?

9 A. Can you rephrase that?

10 Q. Okay. Prior to the middle of March, your
11 belief was that there was nothing incriminating in
12 the phone calls?

13 A. In the phone calls?

14 Q. Yes.

15 A. That's correct.

16 Q. And we could almost expand it a little bit
17 farther than that, to just about everything; right?

18 A. I need you to clarify.

19 Q. Your belief at or about that time was that
20 there wasn't any evidence to link you to this;
21 right?

22 A. I believe so.

23 Q. Okay. And you were offered deals at
24 different points in time; right?

25 A. A couple times, yes.

1 Q. And one time you were going to plead
2 guilty, and then decided to withdraw it pretty much
3 on the day that you were supposed to enter the plea;
4 right?

5 A. That's correct.

6 Q. And you were feeling a lot of pressure to
7 enter into that plea?

8 A. I was feeling a lot of pressure in
9 general, all the way around, yes.

10 Q. That's fair. You were facing a very, very
11 serious indictment; correct?

12 A. That's correct.

13 Q. But there were external pressures on you
14 outside of the evidence in the case that were
15 affecting your decision to plead or not to plea;
16 right?

17 A. That's correct.

18 Q. One of those was your children?

19 A. That's correct.

20 Q. Okay. If you entered a guilty plea, you
21 were told that you would receive a much lower
22 sentence than if you were convicted at trial?

23 A. Haven't been promised any of that. I'm
24 hoping to get a reduction in my sentence.

25 Q. Well, if I direct you to 749, if we look

1 at page 4 of document 749, this is your plea
2 agreement; right?

3 A. Correct.

4 Q. And if you want to see a different
5 portion, let me know. But you face charges on three
6 different counts; correct?

7 A. Correct.

8 Q. Okay. The first count carries a maximum
9 sentence of 10 years, the next one is 20 years, and
10 then the next one is 30 years?

11 A. That's right.

12 Q. And it just happens to be that way, not
13 because it's Count 1, 2, and 3; right?

14 A. Right.

15 Q. Excuse me. It's Count 16. But number 3
16 is the most serious offense that you have?

17 A. Right.

18 Q. And you have, as you said, no criminal
19 history, but you do face up to 30 years in
20 custody -- or you faced up to 30 years in custody on
21 that; right?

22 A. That's correct.

23 Q. But the Government, in paragraph 15, has
24 in fact promised without any cooperation before even
25 coming in here today, that they were only going to

1 seek a sentence of 72 to 84 months; right?

2 A. Right.

3 Q. Okay. So that is -- fair to say that is
4 something that you were promised?

5 A. Yes.

6 Q. Okay. And do you know what that works out
7 to in years?

8 A. Six to seven.

9 Q. And for some reason, the federal sentences
10 always are in months; right?

11 A. Right.

12 Q. So it is correct to say that you're
13 starting off with a promise of six to seven years,
14 and it will be better, depending on how you testify.
15 Or that's your expectation; right?

16 A. That's correct.

17 Q. And that expectation comes from a document
18 that's called the addendum to the plea agreement?

19 A. Right.

20 Q. Because we've heard about this a lot, so
21 I'm going to kind of cover it a little quicker than
22 some others. But if there is something I do too
23 quick, let me know.

24 A. Okay.

25 Q. You're testifying. Okay? Yes?

1 A. Yes.

2 Q. I'm sorry. You have to answer verbally
3 sometimes -- or actually, all the time. The
4 Government is going to file what's referred to as a
5 5K; right?

6 A. Correct.

7 Q. And that simply -- are you aware that's a
8 portion of the United States sentencing guidelines,
9 and that's just a section out of those guidelines?

10 A. Right.

11 Q. And that says that Ms. Shauna Gutierrez
12 assisted the Government by doing this; right?

13 A. That's correct.

14 Q. They spell that out, and then when they've
15 spelled it out, the judge can then sentence you.
16 That's a request to sentence you lower; right?

17 A. Correct.

18 Q. And they represented that that's what they
19 intend to do?

20 A. Right.

21 Q. And so there is no doubt that you believe
22 that that's what they intend to do; correct?

23 A. Right.

24 Q. Much like you intend to ask for the lowest
25 sentence that you can get; correct?

1 A. Right.

2 Q. That makes sense. But that's the way the
3 system is set up.

4 And then you're also seeking a sentence
5 under 18 USC 3553, and that portion there -- or that
6 says 3553(a). Are you aware of all of what 3553(a)
7 is?

8 A. No. If I could read it over real quick.

9 THE COURT: Mr. Benjamin, why don't we
10 take this up over lunch?

11 MR. BENJAMIN: Your Honor, may I approach
12 her with the two documents so she can review them
13 over lunch?

14 THE COURT: All right. We'll be in recess
15 for about an hour.

16 (The jury left the courtroom.)

17 THE COURT: All right. We'll be in recess
18 for an hour.

19 (The Court stood in recess.)

20 THE COURT: All right. I think we've got
21 each of the defendants in the courtroom and an
22 inventory for each defendant.

23 Let me do two things: I need to hear from
24 Mr. Sindel. But I asked Ms. Gilbert in the break
25 for the transcript that you had up here,

1 Mr. Benjamin.

2 MR. BENJAMIN: Yes, Your Honor.

3 THE COURT: I still feel comfortable with
4 my ruling that this is not admissible for
5 completeness. But when I reread what you have
6 highlighted there, and then your little note, which
7 I think now I understand what you interpret it to
8 say, that's just not hearsay. So I think if you
9 want to get it in, I think you can get it in. But I
10 don't think it's under the Rule of Completeness. I
11 just don't think those are hearsay statements.

12 MR. BENJAMIN: Understood, Your Honor.

13 THE COURT: So if you want your transcript
14 back, if you want to admit it, I'll let you admit
15 it.

16 Mr. Sindel.

17 MR. SINDEL: Yes, Your Honor. I'm sure
18 that all of us have felt a little more like
19 accountants than lawyers trying to work out all
20 these numbers. But every night after court, the
21 defense teams meet together and we talk about
22 cross-examinations, and we try to figure out how to
23 shorten them, we try to make sure there's no
24 overlapping, and that the subjects are covered in
25 the most concise way possible. And the reason for

1 that is: We're very concerned about the amount of
2 time that may be available to us to present our
3 case. And if we get down to crunch time -- and
4 that's a hard decision for all the lawyers to make.

5 So we would like to make sure that the
6 Court says if we have leftover time from
7 cross-examination from our efforts to shrink that
8 time that's spent, it goes to either the defense, so
9 they could put on additional evidence; or to the
10 jury so they get the matter quicker, rather than to
11 the Government.

12 THE COURT: Well, I'm not in a position to
13 agree to that yet, because I'm still looking at your
14 charts.

15 MR. SINDEL: You have five minutes.

16 (The Judge unzips his robe.)

17 (Laughter).

18 MR. SINDEL: Good one.

19 MR. BENJAMIN: Counsel is on his own on
20 this one, Judge.

21 THE COURT: Why don't y'all talk and see
22 if that's built into the proposal that you're
23 making. This morning everybody kind of told me,
24 "Just relax. Give us a little bit of time, and we
25 think we're on track." I don't have a problem with

1 that in theory. But I think probably y'all ought to
2 talk and see if that's part of the grand bargain
3 here. Does that make sense?

4 MR. SINDEL: Yes, sir.

5 THE COURT: Talk about it and see what you
6 think. I mean, I've done --

7 MR. SINDEL: I won't trade you coats.
8 Thank you.

9 THE COURT: I'm working on my financial
10 disclosures, and it's a lot less than everybody in
11 the room -- well, not everybody.

12 MR. SINDEL: That's bad.

13 THE COURT: Y'all talk. If y'all agree,
14 I'm still looking at your proposal here. There is
15 kind a built-in chess clock on this, and I
16 understand how that would work.

17 Anything else we need to discuss?

18 MS. ARMIJO: No, Your Honor.

19 (The jury entered the courtroom.)

20 THE COURT: Everyone be seated. Give us
21 just a moment to get Ms. Gutierrez back in here.

22 MS. ARMIJO: No, Your Honor.

23 THE COURT: Is this where we're going to
24 take up the doctor?

25 MS. ARMIJO: This is.

1 THE COURT: Is it Dr. Paul?

2 (Testimony of Ian Paul, M.D.)

3 (Continuation of testimony of Shauna
4 Gutierrez.)

5 THE COURT: All right. Are we going to
6 bring Ms. Gutierrez back on the stand?

7 MS. ARMIJO: Yes, Your Honor.

8 THE COURT: All right.

9 All right, Ms. Gutierrez. If you'll come
10 up and resume your place in the witness box, I'll
11 remind you that you're still under oath.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Benjamin, do you wish to
14 continue your cross-examination of Ms. Gutierrez?

15 MR. BENJAMIN: Your Honor, if I may just
16 have one second?

17 THE COURT: Certainly.

18 MR. BENJAMIN: May we approach, Your
19 Honor.

20 (The following proceedings were held at
21 the bench.)

22 MR. BENJAMIN: Your Honor, I edited the
23 audio. I was going to move to admit essentially
24 what will be Bravo Quebec, BQ.

25 THE COURT: BQ.

1 MR. BENJAMIN: That was all I was given by
2 Ms. Gilbert. "Just leave him."

3 MS. ARMIJO: I guess we're trying to see
4 what --

5 MR. BENJAMIN: It's a command. It's not
6 hearsay.

7 MS. ARMIJO: Oh.

8 THE COURT: I just don't see it being
9 hearsay. It's commands or it can't be being offered
10 for the truth, calling somebody the S word there.

11 All right. Anything else?

12 MR. BECK: What is it? I think, "Just
13 leave him" would be offered for the truth of the
14 matter asserted. "Just to leave him," I think that
15 can be an applied assertion.

16 THE COURT: I think it's more of a
17 command, given what I think, probably the tone of
18 voice and those sort of things. Anything else?

19 MS. ARMIJO: Well, yes, because I think,
20 Your Honor -- I think there may be more to it, so I
21 guess I may later, on the rest of it --

22 THE COURT: You've got a lot more liberty.

23 MR. BENJAMIN: It's January 13.

24 (The following proceedings were held in
25 open court.) All right. Any other objection to BQ?

1 MS. ARMIJO: No, Your Honor.

2 THE COURT: Not hearing any, Defendants'
3 Exhibit BQ will be admitted into evidence.

4 (Defendants' Exhibit BQ admitted.)

5 MR. BENJAMIN: Your Honor, I move to
6 admit -- I apologize, the Court just admitted it,
7 but I move to publish.

8 THE COURT: You may.

9 SHAUNA GUTIERREZ,
10 after having been previously duly sworn under
11 oath, was questioned, and continued testifying
12 as follows:

13 CONTINUED CROSS-EXAMINATION

14 BY MR. BENJAMIN:

15 (Tape played.)

16 Q. That was you; correct?

17 A. Yes, it was.

18 Q. And that was -- Joe Gallegos is the other
19 voice?

20 A. Yes, it is.

21 Q. And he was talking about Tiny; right?

22 A. That's correct.

23 Q. And do you know when that call was made?

24 A. Sometime in December.

25 Q. January 13, 2016?

1 A. Was it January 13? I'm sorry, I'm not
2 good with the date.

3 Q. We heard you testify that you made calls
4 on a daily basis; right?

5 A. That's correct.

6 Q. And there's quite a few of them, aren't
7 there?

8 A. There was quite a few.

9 Q. I believe right before the break I'd asked
10 you if you felt pressured into making a plea.

11 A. Correct.

12 Q. Let me refer back to January 13 for one
13 second. He told you to leave him alone; right?

14 A. That's correct.

15 Q. You understood that as a command?

16 A. That's correct.

17 Q. You felt pressure not to enter -- excuse
18 me. You felt pressure to enter a plea at about the
19 middle to end of March of 2016 (sic)?

20 A. That's correct.

21 Q. And at one point, the middle of March, you
22 were going to enter a plea; right?

23 A. That's right.

24 Q. You withdrew and changed your mind?

25 A. That's right.

1 Q. I guess it's probably not fair to
2 characterize it as withdrawing, but it never got
3 anywhere, other than just talking about it?

4 A. Yes.

5 Q. You didn't go through with it; right?

6 A. That's right.

7 Q. And when you go to enter a plea,
8 essentially you notify the other side and you notify
9 the Court that you're going to do that, and then you
10 have a formal setting; is that fair?

11 A. That's right.

12 Q. But in your experience, people talk about
13 it a lot; right?

14 A. That's correct.

15 Q. And there was pressure because of your
16 family?

17 A. That's right.

18 Q. And you stated you have six kids and
19 you're concerned about them?

20 A. That's correct.

21 Q. There was pressure in that your lawyer was
22 not going to try the case?

23 A. I'm sorry? Can you repeat that?

24 Q. You were pressured because your lawyer was
25 not going to try the case?

1 A. You mean if I took the plea?

2 Q. No, no. Before you took the plea?

3 A. No, she was going to try it.

4 Q. She was pressuring you because of money;
5 right?

6 A. No, she wasn't pressuring me because of
7 money.

8 Q. On or about March of 2018, did you make a
9 statement that says, "And so she's trying to scare
10 the hell out of me. Come to find out she is maxed
11 out on her budget. So I don't know if she just
12 doesn't want to do this anymore because she's maxed
13 out on her budget, or what the hell is going on"?

14 A. That's all speculation. I was speculating
15 at that point.

16 Q. Who were you talking to?

17 A. My mother.

18 Q. I'm sorry?

19 A. To my mom.

20 Q. Could it have been Nina?

21 A. It could have been. I talked to my mom
22 and to Nina.

23 Q. Okay. You decided in the middle of 2018,
24 in the middle of March, that you had -- you're a
25 religious person?

1 A. Yes, I am.

2 Q. -- that you decided that there was a sign,
3 and that's why you didn't want to enter a plea?

4 A. Yes, that's what I had felt.

5 Q. Right. And then a little bit later,
6 something changed?

7 A. That's right.

8 Q. So it was a serious decision; right?

9 A. A very serious decision.

10 Q. And it was a decision that was influenced
11 by a lot of factors that are not related to the
12 evidence in the case?

13 A. That's correct.

14 Q. Because you asserted and have continued to
15 assert that you are not a member or an associate of
16 the SNM; is that right?

17 A. That's fair.

18 Q. Do you know when you were arrested? And
19 I'm just looking for an approximate --

20 A. August 3.

21 Q. Or I could get an exact date. And you
22 were staying with an individual at that time; right?

23 A. Yes, I was.

24 Q. And you were arrested, and that
25 individual's name is Bill; right?

1 A. That's correct.

2 Q. The FBI found you there; right?

3 A. That's correct.

4 Q. And they didn't arrest him.

5 A. They didn't at the time.

6 Q. There was drugs found in the house?

7 A. Yes, there was.

8 Q. And a significant amount of drugs; right?

9 A. That's correct.

10 Q. And then there was also a weapon found in
11 the house; right?

12 A. Yes, there was.

13 Q. And you claimed ownership of the drugs?

14 A. Yes, I did.

15 Q. Special Agent Acee didn't seem to believe
16 you; right?

17 A. That's right.

18 Q. And then he specifically told you that he
19 wasn't going to arrest Bill for the weapon; right?

20 A. That's right.

21 Q. Okay. Would you consider that a benefit?

22 A. I never thought about it that way. I'm
23 not sure.

24 Q. Okay. It could be, or it just depends on
25 how you view it; right?

1 A. That's right.

2 Q. You believe you're probably going to get
3 out soon; right?

4 A. I pray so.

5 Q. Okay. You haven't had a lot of money
6 placed on your books; right?

7 A. That's correct.

8 Q. And one of the reasons is that you think
9 that if you can resolve an outside matter, you may
10 be able to get out; right?

11 A. Can you clarify for me?

12 Q. Okay. You're not only being held on this
13 matter. We heard about a state, essentially,
14 warrant; right?

15 A. That's correct.

16 Q. And I think Ms. Armijo said that, but
17 that's essentially just a failure to appear on what
18 was a case that was open; right?

19 A. That's correct.

20 Q. So you failed to appear probably because
21 you were in custody; right?

22 A. That's correct.

23 Q. My favorite line is usually when somebody
24 tells me that's not their fault. They're there. So
25 I see both sides of that; is that right?

1 A. That's right.

2 Q. So you can't clear that while we're being
3 held here; right?

4 A. That's right.

5 Q. So one of the items that you believe -- if
6 you can clear that, you'll be able to get out?

7 A. Maybe to a halfway house.

8 Q. Okay. And that's what you're looking for;
9 right?

10 A. That's right.

11 Q. And a halfway house, if we talked about
12 it, is something where you live there; there's a lot
13 of rules?

14 A. That's right.

15 Q. You have to -- usually you're restricted
16 to the halfway house for some certain amount of
17 time. Has anybody explained the rules to you?

18 A. Not too much with the halfway house, no.

19 Q. You understand that you're probably going
20 to be locked down and not allowed to do what you
21 want; is that right?

22 A. Yes.

23 Q. But it's not prison and it's not jail,
24 which is huge?

25 A. Right.

1 Q. And a little bit easier to be visited?

2 A. That's correct.

3 Q. You didn't like Paul Rivera, did you?

4 A. No, I didn't.

5 Q. Why?

6 A. Just something about him that rubbed me
7 the wrong way. I didn't like how he was always --
8 he seemed, like, to be leaching off of Brandy
9 Rodriguez all the time. And it was just kind of
10 creepy, the way he hung around so much.

11 Q. And I just want to confirm. Did you say
12 mooching?

13 A. Mooching, like living there, while she's
14 taking care of everything.

15 Q. Okay. And that was -- do you know how Joe
16 felt about --

17 A. Didn't care for him either.

18 MS. ARMIJO: Objection, hearsay,
19 foundation.

20 MR. BENJAMIN: I think that that was
21 actually --

22 THE COURT: There is plenty of foundation.
23 But I don't know how she'd know without him telling
24 her. So I'll sustain.

25 MR. BENJAMIN: That was admitted in one of

1 the jail calls, Your Honor.

2 THE COURT: Well, that may be, but I'll
3 sustain it here.

4 BY MR. BENJAMIN:

5 Q. Okay. On the 27th of February, you went
6 to Albuquerque; right?

7 A. That's right.

8 Q. And then you came back?

9 A. I came back.

10 Q. And where did you go when you came back?

11 A. I went to the house to pick up my son's
12 gift. And I actually turned around and went back to
13 Albuquerque.

14 Q. Okay. Why?

15 A. Because it was my son's birthday.

16 Q. Do you remember where Oso went that day?

17 A. Oso followed me to Los Lunas. I think he
18 was following me to make sure I wasn't talking.

19 Q. Okay.

20 MR. BENJAMIN: May I have a second, Your
21 Honor?

22 THE COURT: You may.

23 MR. BENJAMIN: If I could have 30 seconds,
24 I think I'm just about wrapped up, Your Honor.

25 THE COURT: All right.

1 BY MR. BENJAMIN:

2 Q. Did you and Brandy butt heads at times?

3 A. Not really butt heads. It's just -- I
4 don't know how to explain it. It was -- I don't
5 know how to explain it. We didn't really butt
6 heads. We just didn't click.

7 Q. So you weren't close?

8 A. We weren't close.

9 Q. And there was a rumor -- and to the extent
10 you're aware of this, I'd like to get a yes or no
11 question first -- whether you -- are you aware of
12 who Hope Velasquez is?

13 A. Yes, I am.

14 Q. And who is she?

15 A. She was somebody that was hanging out with
16 Jose Gomez that one night.

17 Q. Did you ever date Jose Gomez?

18 A. No.

19 Q. Okay. Did you ever hang out with him and
20 do drugs with Jose Gomez?

21 A. No, never.

22 Q. And did Hope Velasquez tell people that
23 you had?

24 A. Yes, she did.

25 MS. ARMIJO: Objection, hearsay.

1 THE COURT: I think that would be being
2 offering for the truth. Sustained.

3 MR. BENJAMIN: And Your Honor, if I may
4 have one second, I think -- I would say it's for
5 state of mind.

6 THE COURT: I don't see that. Sustained.
7 BY MR. BENJAMIN:

8 Q. Okay. And at one point you were concerned
9 with how that would be interpreted if that got back
10 to your boyfriend; right?

11 MS. ARMIJO: Your Honor --

12 THE COURT: Sustained.

13 MR. BENJAMIN: That's all, Your Honor.

14 THE COURT: Any other defendants have
15 questions of Ms. Gutierrez?

16 All right. Ms. Armijo, do you have
17 redirect of Ms. Gutierrez?

18 MS. ARMIJO: Yes.

19 REDIRECT EXAMINATION

20 BY MS. ARMIJO:

21 Q. Now, the portion of the call that
22 Mr. Benjamin admitted into evidence was on January
23 13; correct?

24 A. That's correct.

25 Q. But the call where we saw and we heard Joe

1 Gallegos talk to you about his defense attorney --
2 that was on January 20; correct?

3 A. I believe so.

4 Q. And in that call he says it would be good
5 to make the state case go away; do you recall?

6 A. Yes, I do.

7 Q. Now, you were asked about Bill, and when
8 you were arrested. Do you recall?

9 A. Yes, I do.

10 Q. And who is Bill?

11 A. He was a friend of mine.

12 Q. And were you romantically involved with
13 Bill at that time?

14 A. Yes, I was.

15 Q. And when you were told he wouldn't be
16 arrested, were you told he wouldn't be arrested that
17 day?

18 A. It was more like: "We didn't arrest him."
19 It wasn't -- they didn't say whether they were going
20 to or not.

21 Q. All right. And do you know if he was
22 later actually indicted and charged in a separate
23 case?

24 A. In a separate case, yes, I believe so.

25 Q. All right. So there certainly was no

1 benefit for you, because he ultimately ended up
2 getting charged; is that correct?

3 A. That's correct.

4 Q. You mentioned with Mr. Benjamin, George,
5 and he is a Sureno; is that correct?

6 A. That's correct.

7 Q. Now, you were asked about whether or not
8 you thought the Government had anything on you. And
9 in phone calls that you had -- did you plead guilty
10 of your own free will?

11 A. Yes, I did.

12 Q. Did you plead guilty after talking to your
13 attorney and reviewing the evidence?

14 A. Yes, I did.

15 Q. Now, you also -- you were talking with
16 Mr. Benjamin about the majority of your calls being
17 about taking care of the house. Do you recall that?

18 A. Yes, I do.

19 Q. And do you also recall that Mr. Benjamin
20 was asking you about whether or not you were
21 discussing SNM? Do you recall that?

22 A. Yes, I do.

23 Q. Okay. Are you aware of a call on December
24 30th in which you actually do discuss the SNM and
25 the case that he's charged?

1 A. I don't recall.

2 MR. BENJAMIN: Your Honor, objection,
3 mischaracterization. I referred to a specific call,
4 the call with Brandon McDonald.

5 THE COURT: All right. Let's let
6 Ms. Armijo ask her question.

7 MS. ARMIJO: Your Honor, at this time I
8 move for the admission of 969.

9 THE COURT: This is another call?

10 MS. ARMIJO: Yes.

11 THE COURT: Same objection, Mr. Benjamin?

12 MR. BENJAMIN: Yes, Your Honor. And
13 outside of the scope of cross, as well, Your Honor.

14 THE COURT: What's this tied to on
15 anything in cross?

16 MS. ARMIJO: It's tied to the fact -- the
17 characterization of the nature of the calls between
18 Ms. Gutierrez and Mr. Gallegos, and also the
19 impression that there was not discussion about SNM.

20 THE COURT: All right. I'll admit.

21 Anybody else have an objection?

22 Not hearing any further objection,
23 Government's Exhibit 969 will be admitted into
24 evidence.

25 (Government Exhibit 969 admitted.)

1 MR. BENJAMIN: And Your Honor, if I may
2 clarify. The call that I was referring to and asked
3 about was actually Exhibit 960.

4 THE COURT: All right.

5 BY MS. ARMIJO:

6 Q. And Ms. Gutierrez, before we play that,
7 are you aware of the overall -- that there are
8 additional charges other than what you are here in
9 court today and these defendants are here in court
10 today?

11 A. Can you clarify?

12 Q. Are you aware of the charge regarding
13 Gregg Marcantel?

14 A. Yes, I am.

15 Q. And who is Gregg Marcantel?

16 A. He was part of the prisons, Secretary --
17 part of the prisons.

18 MR. BENJAMIN: Your Honor, object. Can we
19 approach?

20 THE COURT: You may.

21 (The following proceedings were held at
22 the bench.)

23 MR. BENJAMIN: Your Honor, I'm taking the
24 position I don't believe I opened the door or
25 exceeded anything in my question. My question

1 specifically referenced -- and I asked her about the
2 call with Brandon McDonald. The Court granted a
3 severance. These are essentially two separate
4 cases. And this is going to open, for lack of a
5 better term, the floodgates for some issues. If the
6 Court is allowing the call to be played, I'd ask it
7 be out of the presence of the jury because we can't
8 take back what's in the call. I don't know what
9 happened on December 30th.

10 THE COURT: What's going to happen in this
11 call? I assume you're going to play a portion.

12 MS. ARMIJO: A portion of the call where
13 he is directing or commanding her to go and get dirt
14 on Gregg Marcantel. And he specifically says, and
15 we believe you can hear "dirt on him in Louisiana."
16 He was run out for being crooked. So he keeps
17 telling her about things that she should do as far
18 as the SNM and the case related to them.

19 MR. BENJAMIN: Is the SNM in there?

20 MS. ARMIJO: That's part of what the
21 charges are in reference to. Because he talks about
22 this whole thing, "I'm going to write it down
23 tonight and send it, though," and again he's
24 commanding her, telling her to do things for him;
25 not specifically the SNM. But basically the

1 impression that was left with all the calls -- and I
2 believe she said, "I just took care of the trailer
3 and took care of the dogs." She was doing more than
4 that.

5 MR. BENJAMIN: I would argue that, one,
6 the client is investigating his case. At this point
7 in time he's had his indictment for 27 days at this
8 point in time. And he's allowed to assist in the
9 preparation of his defense. And think the only
10 phrase that comes to mind is --

11 THE COURT: If you want to argue that,
12 you're free to. But I do think that it's tied
13 enough to SNM cases that I'll say -- allow it. So
14 I'll admit. See if there is anybody else that
15 has --

16 MR. BENJAMIN: Your Honor, and just so I'm
17 clear, I don't know as I necessarily need this, but
18 is the Court ruling that I opened the door to this
19 or this is just tight enough and close enough on its
20 own?

21 THE COURT: Well, Marcantel has already
22 been mentioned in this case several times.

23 MR. BENJAMIN: I understand, Your Honor.

24 THE COURT: So I do think the sweeping
25 sort of impression that there was no discussions

1 about SNM -- I do think this rebuts that.

2 MR. BENJAMIN: And Your Honor, understand,
3 I don't have the transcript. It was given to us at
4 lunch. But I think that one was given, one of them
5 was, but this transcript doesn't mention SNM. It
6 mentions an alleged ^ actually at this point in
7 time. He's a victim of the SNM. But I think --

8 THE COURT: I think I have a good sense as
9 to the transcript there.

10 MR. BENJAMIN: Okay.

11 THE COURT: Do you have a number on that?

12 MS. ARMIJO: 969.

13 THE COURT: Is this the one I already
14 admitted?

15 MS. ARMIJO: Yes.

16 (The following proceedings were held in
17 open court.)

18 THE COURT: All right Ms. Armijo.

19 MS. ARMIJO: All right. If we could play
20 969.

21 (Tape played.)

22 MS. TORRACO: Your Honor?

23 THE COURT: Yes.

24 MS. TORRACO: Could we get a limiting
25 instruction?

1 THE COURT: All right. These statements
2 by Mr. Joe Gallegos can only be used in your
3 deliberations of the charges against Mr. Joe
4 Gallegos, not against any of the other defendants.
5 BY MS. ARMIJO:

6 Q. While we're having technical difficulties,
7 really quick, did you hear that portion?

8 A. Yes, I did.

9 Q. Do you know who it was that you were
10 discussing there?

11 A. Yes, it was -- I don't know exactly his
12 position, but he is part of the prisons. He was in
13 charge of all of them.

14 Q. Okay. And were those -- was he related
15 to -- as part of other charges related to this
16 investigation?

17 A. Yes, it is.

18 Q. And is Joe telling you to do something
19 there in reference to it?

20 A. Yes, he is.

21 Q. And what is he telling you?

22 A. He's wanting me to research and find out
23 more about this guy.

24 Q. Did he ask you to find dirt on him?

25 A. Yes, he did.

1 MS. ARMIJO: All right. That's all I
2 have.

3 THE COURT: Thank you, Ms. Armijo.

4 MR. BENJAMIN: May I have a brief recross,
5 Your Honor?

6 THE COURT: Yeah, you've got a little more
7 time. Go ahead.

8 RECROSS-EXAMINATION

9 BY MR. BENJAMIN:

10 Q. Are you aware if that individual's name is
11 in the indictment that Joe has?

12 A. Marcantel?

13 Q. Yes.

14 A. What do you mean? Can you --

15 Q. When was Joe taken into custody?

16 A. He was taken in in December 2015.

17 Q. And this is at the end of December 2015;
18 right?

19 A. That's correct.

20 Q. And he has a copy of his indictment,
21 because when you are arraigned, you get a copy of
22 your indictment; right?

23 A. That's correct.

24 Q. And he's asking you to investigate the
25 basis of, essentially, some charges; right?

1 A. That's correct.

2 Q. When you're in custody, do you have access
3 to the internet?

4 A. No, you don't.

5 Q. Can you do research?

6 A. No, you can't.

7 Q. Where were you located on the day that
8 this call was made?

9 A. I was on the streets.

10 Q. Did you have the internet?

11 A. Yes, I did.

12 Q. Okay. And he was asking you to do
13 research; right?

14 A. That's correct.

15 Q. And having been subject to this, you're
16 probably an expert in this at this point in time,
17 but what is the purpose of cross usually? When we
18 talk about when we're going to cross-examine
19 somebody, a lot of times people dig up dirt in order
20 to cross-examine somebody; right?

21 A. That's correct.

22 Q. That's a lot of times people's
23 convictions, other information; right?

24 A. That's right.

25 Q. Are you familiar with that?

1 A. Yes.

2 MR. BENJAMIN: Okay. Pass the witness.

3 THE COURT: Thank you, Mr. Benjamin.

4 Are you going to have anything further,
5 Ms. Armijo?

6 MS. ARMIJO: Just one question.

7 THE COURT: Why don't we take it up then
8 after the break then, okay? All right. We'll be in
9 recess for about 15 minutes. All rise.

10 (The jury left the courtroom.)

11 THE COURT: All right. We'll be in recess
12 for 15 minutes.

13 (The Court stood in recess.)

14 THE COURT: Let's go back on the record.
15 I think we've got all the defendants in the
16 courtroom. We've got an attorney for each
17 defendant.

18 Let me go back, before Mr. Benjamin sits
19 down. Right at the end I sustained a hearsay
20 objection when Mr. Benjamin sought to ask
21 Ms. Gutierrez a question eliciting an out-of-court
22 statement. And here's what I remember the question
23 being -- we can look it up, but I think Mr. Benjamin
24 can tell me -- but it was something along the lines
25 of: Didn't a third party -- and I believe that

1 third party is Hope Velasquez; right?

2 MR. BENJAMIN: Yes, Your Honor.

3 THE COURT: -- say that you, meaning
4 Ms. Gutierrez, and Jose Gomez were really tight and
5 did drugs together. And I sustained the objection.

6 I was thinking about it during the break.
7 And you tell me if I'm wrong, but I think you were
8 trying not to elicit that out-of-court statement for
9 the truth of the matter. You're not trying to prove
10 that Ms. Gutierrez and Jose Gomez were really tight
11 and did drugs together; right?

12 MR. BENJAMIN: No, Your Honor.

13 THE COURT: You're trying to show that Mr.
14 Gutierrez and Mr. Gomez -- that's not what you're
15 trying to prove. You're trying to elicit it and
16 explain why under -- if I understand your theory of
17 the case, that Ms. Gutierrez conspired to assault
18 Mr. Gomez, perhaps because Mr. Gomez was spreading
19 lies about her and/or disprove rumors that
20 Ms. Gutierrez had heard. Am I getting close to what
21 you're trying to use that statement for?

22 MR. BENJAMIN: Yes, Your Honor. I think I
23 said her state of mind, to disprove -- or not so
24 much to prove or disprove, but to deal with a rumor.

25 THE COURT: Okay. But you're not trying

1 to prove that ---

2 MR. BENJAMIN: She used drugs or
3 something, no.

4 THE COURT: Well, I think offering those
5 statements for that limited purpose would tend to
6 exculpate Mr. Joe Gallegos, and would not be offered
7 for the truth. So before you leave the stand, I'll
8 give you a chance to resume and ask that question
9 that I sustained the objection to.

10 MR. BENJAMIN: Thank you, Your Honor.

11 THE COURT: All rise.

12 (The jury entered the courtroom.)

13 THE COURT: All right. Everyone be
14 seated. All right. Mr. Benjamin, I was going to
15 let you ask another question.

16 MR. BENJAMIN: Yes, Your Honor.

17 THE COURT: Mr. Benjamin.

18 BY MR. BENJAMIN:

19 Q. I'd asked you who -- and may I have -- the
20 Court said one question. I was going to ask, just
21 so that we're back and oriented --

22 THE COURT: You may.

23 Q. Who is Hope Velasquez?

24 A. Hope Velasquez is a friend of Jose Gomez'.

25 Q. Okay. And this next question will be just

1 a yes or no at this point. She was spreading -- you
2 testified that you didn't use drugs with Jose Gomez;
3 correct?

4 A. That's correct.

5 Q. You weren't involved with him
6 romantically?

7 A. Right. Not at all.

8 Q. Not at all.

9 There was a rumor that you were using
10 drugs and romantically involved with him?

11 A. There was a rumor, yes.

12 Q. And that was not true, in your opinion;
13 right?

14 A. That's not true.

15 Q. Okay. And you passed that information on
16 to Joe Gallegos; correct?

17 A. Yes, I did.

18 Q. And it was in order to tell him so that he
19 didn't hear it from somebody else; right?

20 A. That's correct, yes.

21 MR. BENJAMIN: Pass the witness.

22 THE COURT: Thank you, Mr. Benjamin.

23 Ms. Armijo, do you want to conduct
24 redirect?

25

1 REDIRECT EXAMINATION

2 BY MS. ARMIJO:

3 Q. And Ms. Gutierrez, are you aware of the
4 indictment in this case?

5 A. Yes, I am.

6 Q. Isn't it true that the indictment just has
7 victims' initials and not names?

8 A. That's correct.

9 Q. All right. So the indictment does not say
10 "Gregg Marcantel"; correct?

11 A. That's correct.

12 MR. BENJAMIN: Objection, Your Honor.
13 Outside the scope.

14 THE COURT: I think it's tight.
15 Overruled.

16 MS. ARMIJO: All right. That's all I
17 have. Thank you.

18 THE COURT: Thank you, Ms. Armijo.

19 All right. Ms. Gutierrez, you may step
20 down.

21 Is there any reason that Ms. Gutierrez
22 cannot be excused from the proceedings, Ms. Armijo?

23 MS. ARMIJO: No, Your Honor.

24 THE COURT: How about from the defendants?
25 Any objection to her being excused?

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MR. BENJAMIN: No, Your Honor.

THE COURT: Not seeing or hearing any, you
are excused from the proceedings. Thank you for
your testimony.

THE WITNESS: Thank you.

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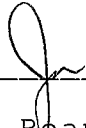
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I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages
constitute a true transcript of proceedings had
before the said Court, held in the District of New
Mexico, in the matter therein stated.

In testimony whereof, I have hereunto set my
hand on this 13th day of May, 2018.


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